

WHATCOM COUNTY HEARING EXAMINER

RE: Preliminary Long Subdivision ) LSS2018-0003  
Preliminary PRD Plan ) PLN2018-0016  
Shoreline Substantial Development Permit ) SHR2018-0018  
Shoreline Conditional Use Permit ) SHC2020-0009  
Application by )  
**Governors Point Land, LP** ) FINDINGS OF FACT,  
***“Governors Point Long Subdivision”*** ) CONCLUSIONS OF LAW,  
 ) AND RECOMMENDATION  
 ) TO COUNTY COUNCIL

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting Preliminary Long Subdivision Approval to subdivide 126 acres into one 98-acre non-residential tract to be owned and operated by the Whatcom Land Trust and 16 residential lots with associated infrastructure including roads, stormwater and fire utilities. Public water is proposed to be provided by the City of Bellingham. The lots will be served by individual onsite septic systems. A tender dock with a float, pier and gangway will be constructed on Pleasant Bay and improved gravel paths and an 800 square foot storage and bathroom building will be constructed within 200 feet of the shoreline.

Recommendation: The Hearing Examiner recommends the Whatcom County Council approve the Development Agreement and grant Preliminary Long Subdivision, Shoreline Substantial Development and Shoreline Conditional Permit Approval to the proposed development, subject to the 150 conditions of Approval recommended herein.

**SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

## INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

### I.

Owner: Governors Point Land LP

Agent: Wayne Schwandt

Surveyor: Jepson and Associates

Engineer: Cascade Engineering Group

Site Location/Address: Approximately 126-acre parcel off Pleasant Bay Road, Bellingham, Washington

Assessor's Parcel Numbers: 370236145506, 370225122040, 370225085132, 370225115201, 370225093208, 370225095189, 370225058223, 370225018180, 370225017225, 370225002162, 370226486305, 370226531156, and 370226509165

Zoning: Rural Residential [RR5A]

Comprehensive Plan: Rural

Number of Lots: Sixteen residential lots and three non-residential tracts

Total Acreage: Approximately 126 acres

Roads: Private Road

Water Supply: City of Bellingham

Sewage Disposal: On-Site Septic Systems

Fire Protection: South Whatcom Fire Authority

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham Public School District

Topography: The site is varied with steep slopes and flat areas.

Vegetation: Vegetation consists mostly of mature standing trees, young saplings and pasture grass.

Adjacent Land Uses: North: Chuckanut Bay  
East: Single-family Residential  
South: Single-family Residential  
West: Bellingham Bay

Utilities Easements: Necessary utility easements will be established prior to recording the Final Plat.

Variances: No variances requested, except deviations outlined in the Development Agreement.

SEPA Review: Determination of Non-significance, issued June 18, 2020

Authorizing Ordinances

Revised Code of Washington Chapter 58.17  
Revised Code of Washington Chapter 36.70B.170  
Whatcom County Comprehensive Land Use Plan  
Whatcom County Code Chapter 2.33, Permit Review Procedures [repealed ordinance 2018-032]  
Whatcom County Code Chapter 12.08, Development Standards  
Whatcom County Code Chapter 15, Building Code  
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 21, Subdivision Regulations  
Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, November 1, 2020  
Mailed – Notice of Revised Application, September 21, 2020  
Notice of Public Hearing, October 27, 2020  
Published – Notice of Public Hearing, November 5, 2020

Hearing Date: November 18, 2020

Parties of Record

Governors Point Land LP  
Randy Bocci  
862 Peace Portal Drive, Suite 101  
Blaine, WA 98230

Wayne Schwandt  
965 Grand Blvd.  
Bellingham, WA 98229

Bob Carmichael  
Attorney for Governors Point Land LP  
P.O. Box 5226  
Bellingham, WA 98227

Rand Jack  
Whatcom Land Trust  
412 N. Commercial St.  
Bellingham, WA 98225

Craig Parkinson  
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Cascade Civil Engineering

Bill Cantrell  
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Royce Buckingham  
Whatcom County Prosecutor

Mark Personius, Director  
Amy Keenan, Senior Planner  
Andrew Hicks, Shoreline Administrator  
Ryan Ericson, Natural Resources Supervisor  
Andrew Wiser, Geologist Planner  
Erin Page, Critical Areas Planner  
Will Anderson, Fire Inspector  
County Planning Department

Laura Vandervort, Engineer III  
Sanja Barisic, Senior Engineering Technician  
Doug Ranney, Engineering Manager/Development  
Public Works Engineering Services

Members of the public who submitted written comments contained in the Hearing Examiner file.

## **GOVERNORS POINT EXHIBIT LIST**

(access on Hearing Examiner website @whatcom  
County.us)

**November 30, 2020**

<b>Exhibit Number</b>	<b>Title</b>
1	LSS Application
2	Project Narrative
3	Quit Claim Deed
4	Proposed Modifications
5	Surrounding Parcel Information
6	Mailing Labels
7	Preliminary Traffic Concurrency
8	Land Disturbance Permit Application
9	CEGI Road and Utility Schematic
10	AESI Geotechnical Assessment Report
11	Title Guarantees
12	Shoreline Substantial Development Application
13	Whatcom Land Trust Donation Agreement
14	City of Bellingham Wholesale Service Agreement
15	Receipt
16	Determination of Completeness
17	Notice of Application
18	Vicinity Map
19	Legal Notice - Tear Sheet
20	Notice of Application Combined Distribution List
21	Notice of Application - Legal Notice
22	WSDOT Letter
23	OSS Subdivision Application
24	GTCI Traffic Impact Analysis
25	AEI Dock Site Plan
26	CEGI Request for Private Road
27	CEGI Stormwater Report
28	AESI Slope Setback Technical Memo
29	CEGI Response - Stormwater Comments
30	CEGI Individual Stormwater Exhibit Examples
31	CEGI Roadside Barrier Memo

32	Revised Project Narrative
33	WSDOT No Further Comments Letter
34	FESI Marine Vegetation Assessment
35	CEGI Stormwater Response
36	CEGI Private Road Speed Limit Variance Request
37	Speed Limit Variance Request Approval
38	CEGI Preliminary Road and Utility Plans
39	FESI CAO Marine Nearshore Shoreline Habitat
40	CAI Wetland HCA Assessment
41	CAI No Net Loss Analysis
42	CAI Habitat Management Plan - Final
43	Revised SEPA Checklist
44	AESI CAO Slope Setback Technical Memo
45	Lummi LNTHPO Comments
46	Public Works Concurrency DIMIS Analysis
47	MDNS Determination
48	Revised Codes, Covenants and Restrictions
49	Preliminary Plat Maps - Sheets 1-4
50	Preliminary Plat Maps - Sheets 5 and 6
51	CAI Wetland HCA Assessment - Approved (Redlined)
52	Shoreline Conditional Use Permit Application
53	Revised SHC Notice of Application
54	Revised Legal Notice
55	Revised Combined Distribution List
56	Revised Certificate of Mailing
57	Bellingham Public Schools Will Serve Letter
58	South Whatcom Fire Authority Will Serve Letter
59	Development Agreement
60	CAI Addendum
	Public Comment
61	Notice of Application - 20190128 - 20190227
62	Public Comments - 20190228 - 20200617
63	Public Comments SEPA - 20200618-20200713
64	Public Comments - 20200714-20200920
65	Public Comments - SHC - 20200921-20201021
66	Interested Parties
	Staff Memos
67	Public Works Engineer Services Memo
68	Shoreline Staff Report

69	Geologic Hazards Memo
70	HCA Wetlands Memo
71	Health Memo
72	Fire Memo
73	Combined Staff Report - November 5, 2020
74	Exhibit List - November 5, 2020 (DRAFT)
75	Excerpt from Appendix E - Shoreline Management Program Area Designations Map
76	Appendix E - Shoreline Management Program Area Designations Map
77	1999 Settlement Agreement
78	Stipulated Judgement Cause No. 93-2-02447-6
79	Donation Agreement Addendum
80	Superseding Settlement Agreement Clean Draft Ecology Edits
81	Superseding Settlement Agreement Clean Draft Ecology Edits Incorporated
82	Staff Report Revisions Memo
83	Additional Public Comments
84	Revised Combined Staff Report - November 30, 2020
85	Final Exhibit List - November 30, 2020 (access on Hearing Examiner website @whatcom County.us)

## II.

The project area consists of an approximately 126-acre peninsula south of Bellingham, with extensive waterfront on 3 sides abutting Bellingham/Samish, Chuckanut and Pleasant Bays. The site is currently undeveloped with mostly mature forest. An existing gravel road provides access through the site. Wetlands have been identified onsite; however, the wetlands are located within the 98-acre Tract A proposed to be dedicated to the Whatcom Land Trust. The property is Rural Residential [RR5A].

The Governors Point subdivision proposal includes sixteen (16) clustered residential building lots and three reserve tracts in a zone which allows one single-family residential unit per five areas (25 units). The Applicant has chosen to cluster the development on the western shore of the peninsula and will leave approximately 98-acres in the Tract A reserve

area. To serve the subdivision, a private road will be constructed with access to Pleasant Bay Road. The 98-acre reserve area [Tract A] will be deeded to the Whatcom Land Trust (WLT) as a Nature Preserve. The WLT expects to provide two miles of non-motorized walking trails and trail access to beaches on both Pleasant and Samish Bays.

Tract B will be approximately an acre and include a float, pier and gangway on Pleasant Bay, improved gravel paths, and 800 square foot storage and bathroom building. The tender dock will be for temporary loading and unloading purposes only and will include float, pier and gangway. Tract C will be located on the Samish Bay side of the property and provide access to the marine shoreline. These two tracts will serve the 16-lot subdivision.

The proposed Development Agreement was summarized in the staff report as follows:

*"In summary, the applicant is proposing to deviate from development standards for the following items:*

- *Reduce the shoreline setback from 150 feet to 70 feet for lots 1-7 and 75 feet for lots 8-16. Site specific setbacks, including steep slope setbacks will be determined at the building permit; and*
- *Allowance of up to 500 square feet of development in the shoreline setback.*

*As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement (Attachment A) process to mitigate potential impacts. The applicant has proposed the following:*

- *Create a 98acre parcel to be permanently protected as open space;*
- *Reduce the number of residential lots from 25 to 16;*
- *Limit development to less than 10 percent of the total site; the entire site is a single watershed;*
- *Limit development to a 20% average for the residential lots.*
- *Preserve remaining area of each lot through a conservation easement at the time of future development.*
- *Limit residential structure to less than 2,900 square feet conditioned living space as defined as interior space within a closed structure intended for human habitation;*
- *Limit total floor area to less than 4,000 square feet per lot which includes the interior of garages, storage sheds, carport or similar open-sided structures; and*
- *Prohibit shared docks except on lot 16 and Tract B."*

In return for a modified shoreline setback on the 16 proposed shoreline lots and an allowance for up to 500 square feet of development in the shoreline setback area of each lot, the Applicant is reducing the allowed density by 9 lots; limiting the impacts of actual development on each lot by limiting the building square footage and the yard size, eliminating the right to individual docks, limiting overall development impacts to less than 10% of the site, mitigating development impacts through implementation of the detailed Habitat Management Plan; and transferring 98-acres of the site which includes extensive undeveloped waterfront, to be held as a Nature Preserve, with potential public access. It is worth noting that the 98-acres contains "Mature Forrest," which can be expected to result in re-establishment of Old Growth Forrest areas, if protected. The 98 acres is land highly valued as part of a very extensive wildlife corridor, and includes a very significant stretch of prime Pleasant Bay and Chuckanut/Bellingham Bay waterfront. This Applicant appears to have chosen not to attempt to maximize his ability to financially profit from his development rights and has quite simply offered a gift to the general public and future generations.

The Hearing Examiner finds that the Project, as conditioned, will result in no net loss of shoreline ecosystem functions and ecosystem wide processes.

### III.

The Application was reviewed by the Technical Review Committee. The recommendation of this Committee was set forth in the Revised Final Staff Report, (hereinafter Staff Report), entered into the Hearing Examiner file as Exhibit No. 84, dated November 5, and 30, 2020, and prepared by the Land Use Services Division of Whatcom County Planning and Development Services. The Technical Review Committee put in writing its Findings of Fact and Conclusions of Law. Based on these, the Technical Review Committee has determined that, subject to proposed extensive and detailed conditions, the project will comply with applicable Whatcom County and Washington State regulations. The

Technical Review Committee has recommended approval of the Long Subdivision and Development Agreement applications, subject to the 150 conditions set forth in the Staff Report, as modified in a memorandum to the Hearing Examiner, dated November 18, 2020, Exhibit 82 in the Hearing Examiner file.

The Technical Committee's recommendation was based on Staff review and approval of the following Professional assessments and their recommendations:

Site Plan Review Technical Memorandum, Associated Earth Sciences, Inc., March 13, 2020.

Wetland and Habitat Conservation Area Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Conservation Areas No Net Loss Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Management Plan, Cantrell and Associates, Inc., Revised January 25, 2020.  
Governors Point Long Plat Road and Utilities Schematic (Sheets C1-C23), Cascade Engineering Group, P.S., Inc., January 14, 2020.

Eelgrass Survey Marine Vegetation Assessment, Tract B Governors Point Long Plat, Fairbanks Environmental Services, Inc., January 6, 2020

Governors Point Project Narrative, revised August 14, 2019.

Steep Slope Setback Technical Memorandum, Associated Earth Sciences, Inc., October 11, 2019.

Governors Point Residential Subdivision, Whatcom County, Washington, Stormwater Site Plan, Cascade Engineering Group, P.S., Inc., Revised July 9, 2019.

Archaeological Assessment for the Governors Point Residential Development, Bellingham, Whatcom County, Washington, Drayton Archaeology, June 3, 2019.

Governors Point Development Traffic Impact Analysis, Gibson Traffic Consultants, Inc., June 2019.

Geotechnical Assessment Report, Associated Earth Sciences, Inc., October 29, 2018

The Applicant's Representative indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the final Conditions of Approval requested by Staff. Staff has provided a summary of the public comments received and Staff's responses to those comments in the Final Revised Staff Report, exhibit 84. There was no public comment opposing the proposal at the public hearing. All Whatcom County agencies have recommended Approval, subject to conditions related to their jurisdiction.

There was significant public comment on the Project. Staff has discussed the nature of the comments and addressed them in the Staff Report. The Hearing Examiner notes that the public concerns expressed, often strongly, have led to changes in the Proposal and in the recommended Conditions of Approval (for example see Exhibit 82). The Hearing Examiner finds that concerns raised have been considered and properly addressed.

There were extensive public comments supporting the Project as proposed. Much of the support was generated by the transfer of most of the site to the Whatcom Land Trust. There were also numerous comments supporting the proposal from persons living in the nearby Pleasant Bay and Chuckanut Bay communities.

The Factual Findings in the Final Revised Staff Report, Exhibit 84, are supported by the record as a whole and are hereby adopted by the Hearing Examiner, through this reference, as Findings of Fact herein.

#### **IV.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

### **CONCLUSIONS OF LAW**

#### **I.**

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Review Committee, as set forth in the Staff Report, or its Conclusions of

Law were incorrect or failed to properly support the approval of the Preliminary Long Subdivision. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated November 5, and 30, 2020, Exhibit No. 84, a copy of which is attached hereto and incorporated herein by this reference.

The Hearing Examiner concurs with the Technical Review Committee that, subject to the proposed Conditions of Approval, the project will comply with the applicable Whatcom County and Washington State Subdivision and Shoreline Regulations, and is in the General Interest, Health and Welfare of the public. The Hearing Examiner should recommend the Whatcom County Council adopt the Development Agreement and grant Preliminary Approval of the Subdivision, the Shoreline Substantial Development Permit and Shoreline Conditional Use Permit, subject to the Conditions of Approval set forth below.

## II.

Based on these Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following recommendation:

### **Recommendation**

The Hearing Examiner hereby Recommends the Whatcom County Council grant Preliminary Approval of the proposed Subdivision, the Shoreline Substantial Development Permit, the Shoreline Conditional Use Permit, and Approve the proposed Governors Point Development Agreement, on an approximately 126 acre parcel to be located on Assessor's Parcel Nos. 370236145506, 370225122040, 370225085132, 370225115201, 370225093208, 370225095189, 370225058223, 370225018180, 370225017225, 370225002162, 370226486305, 370226531156, and 370226509165, accessed off of Pleasant Bay Road, Bellingham, Washington, subject to the following conditions:

### **Conditions of Approval**

#### **Current Planning Division**

1. The use and location on the site as shown on the site plans dated September 2020 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the final plat is submitted in proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The applicant shall obtain all necessary federal, state and local permits prior to construction.
7. The final plat shall include a note referring to the signed and recorded Development Agreement.
8. An easement on the subdivision plat shall be placed over the reserve area per the definition in WCC 20.97.344. The reserve area shall be designated as open space and protected in perpetuity. The minimum percentage of the parent parcel required to be within a reserve area is 30 percent (WCC 20.32.253).
9. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

### **State Environmental Policy Act**

10. As recommended in the Archaeological Assessment for the Governor's Point Residential Development, Bellingham, Whatcom County Washington (Report 0519C) by Drayton Archaeology, dated June 3, 2019; archaeological monitoring done by a

qualified professional shall occur during construction of the trail and dock on the Reserve Tract near 45WH501.

11. Work may proceed on proposed reserve tract but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO shall review and comment, if necessary, on the Monitoring and Inadvertent Discovery Plan (MIDP) before the construction begins.
12. Work may proceed on proposed lots 1-16 with the Washington State Department of Archaeological and Historic Preservation's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation shall be included in the IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

### **Public Works Engineering Services**

13. The applicant shall comply with the conditions of the Whatcom County Public Works Engineering Services in the memo dated October 29, 2020, unless modified by that Department or appealed to the appropriate agency.
14. All development shall comply with the Whatcom County Development Standards (WCDS).
15. Sight distance at all road intersections shall meet WCDS.
16. Roads within this development are to be private as permitted under Section 505.E. of Chapter 5, Road Standards.
17. A private road maintenance agreement shall be included in the CC&R's for the subdivision.
18. County-approved road names are required to be shown on the final plat.
19. A map at 1"= 400' scale of the lots shall be provided to PWES for address assignment. Addresses shall be shown on the final plat. The plat address fee shall be paid prior to recording.
20. Interior private roads shall be passable at all times for emergency and public service vehicle use.
21. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering review and approval prior to construction.
22. The proposed residential private roads shall be constructed as follows:

- a. paved apron per WCDS drawing 505.E-4
  - b. 40-foot minimum access easement width
  - c. a total of twenty-foot minimum roadway inclusive of shoulders, with
    - i. nine-foot minimum width paved drive lanes,
    - ii. one foot minimum width crushed surfacing shoulders, or
    - iii. where terrain constraints exist, road section may include rock wall or retaining wall with concrete vertical curb and gutter at face of wall
  - d. 2% max cross slope
  - e. 2-1/2" minimum compacted depth HMA
  - f. 2" minimum compacted depth crushed surfacing top course
  - g. 10" minimum compacted depth aggregate for gravel base or 8" of additional crushed surfacing base course
  - h. turnarounds at road ends as shown on the preliminary plans and according to WCDS drawing 505.L-2
23. Horizontal and vertical curve information shall be provided on the civil plans. Alignments shall meet minimum horizontal curve radii per WCDS, as approved in the preliminary plans. The residential portion of Road B has been approved, through variance, for reduced speed and hence reduced minimum radii, to be mitigated with widened roadway at minimum curves.
24. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way prior to commencing said work.
25. All signing and striping shall be installed as per the Manual of Uniform Traffic Control Devices (MUTCD) standards at the developer's expense.
26. The utility access road serving the boat dock shall be a minimum of twelve feet wide.
27. From the intersection of Roads A and B, for a minimum of 100 feet in each direction from the center of intersection, roads shall be constructed with a minimum of 18 foot paved driving surface plus four foot shoulders for a total width of 26 feet.
28. Road B shall be posted for the requested reduced 20mph speed limit. Signs shall be included in the civil plans.
29. Applicant shall provide certified evaluation of the need for traffic barrier by a professional engineer for the proposed private roads. Evaluation shall include the need for a guardrail or barrier at the top of proposed roadside walls. Evaluation shall include site plans noting areas where the recovery zone is less than ten feet, areas where the downhill slope is greater than 2:1, and areas with greater than 10-foot vertical drop below.

30. A final engineered stormwater design report that meets requirements of the current County-adopted Department of Ecology Stormwater Management Manual for Western Washington shall be submitted and approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington. This development shall comply with minimum requirements 1 through 9.
31. The stormwater design report shall account for the total allocated hard surface value, to include the sum of hard surface values for roads, apron, and the hard surface values assigned to each lot.
32. The final engineered stormwater design report shall include SWM best management practices (BMPs) and design for the private roads, as well as a conceptual site plan for each lot. The lot-specific site plans shall demonstrate that each lot can accommodate driveway access and building site with stormwater BMPs that meet required setbacks and slopes per fire, septic separation, critical area and shoreline jurisdictions, and SWM requirements. Applicant shall provide geotechnical support for the design as needed, per SWM and PWES.
33. Private stormwater treatment facilities are to be located outside of the County right of way (ROW). If the engineer determines best location for facility is within the ROW, submit request for approval with County Maintenance and Operations, and provide private maintenance agreement and plan to the County.
34. Downstream conveyance features including ditches and culverts that accept runoff from the development shall be assessed for condition by the engineer and shall be replaced or improved to provide adequate conveyance and erosion protection as needed, per the SWM and County approval.
35. The Stormwater Maintenance Plan shall be included in the CC&R's for the subdivision. The CC&R's shall include a requirement for those lot designs that include a stormwater pump, an emergency stand-by generator is required to remain on site.
36. The developer shall obtain approval from the local U.S. Postal Service Office for the location, style and height of the mailboxes. Mailbox locations, if shared, shall be shown on the final construction plans.
37. Following County approval of the civil construction plans and prior to commencement of construction, the developer, contractor, and developer's construction engineer shall schedule and participate in a formal Preconstruction Conference with PWES staff.
38. Engineer to provide certified construction compliance assurance statement following completion of the work and prior to final inspection per Chapter 2, WCDS.

39. Certified record drawings for all new roads and stormwater systems shall be submitted to and approved by PWES upon completion of construction. Record drawings shall include the Record Drawing Certification statement from Chapter 5, WCDS.
40. The plat shall identify stormwater BMPs required for plat roads and lots. The plat shall identify allowable impervious area per lot and note conservation and dispersion areas.
41. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement (DCGE) for plat stormwater maintenance purposes. Document shall include an exhibit indicating stormwater features and their locations, define the stormwater features, and include a maintenance and operations manual. Reference to the recorded DCGE shall be made on the final plat.
42. The construction engineer shall submit a construction cost estimate of the subdivision stormwater drainage system features with certified statement to PWES upon completion of the work and prior to County approval of the finished work. The applicant shall post a stormwater warranty security for 10% of the cost estimate (\$5,000 minimum). The security shall be in effect for two years following final record drawings.
43. Revised signature blocks and notes shall be added to the final plat prior to approval.

#### **Fire Marshal's Office**

44. The applicant shall comply with all of the conditions of the Fire Marshal's memo, dated September 22, 2020, unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
45. Access roads shall meet Whatcom County Public Works-Engineering Services requirements and Whatcom Fire Marshal's Office road standards for grade surface requirements, turnouts, and turnarounds.
46. Fire permit is required for installation of underground fire lines and hydrants.
47. Access roads to the residences and fire sprinkler systems shall be address at time of building permit submittals.
48. Access road to the boat dock shall be a minimum of 12 feet wide and meet grade surface requirements per Whatcom County Code Chapter 15.04.040

#### **Geohazardous Areas**

49. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Geohazards in the memo dated November 4, 2020, unless modified by that Department or appealed to the appropriate agency.

50. Alteration of any plat element intended to ensure the ability to avoid regulated geologically hazardous areas shall be reviewed by the Technical Administrator of Article 3, and if deemed necessary, a qualified professional in accordance with WCC 16.16.320(E). Such elements include, but are not limited to the following: lot configuration, stormwater and septic utility easements and stormwater system design.
51. Supplemental geologic hazard review by the Technical Administrator of Article 3 shall be required prior to issuance of final plat approval.
52. The following note shall be included on the face of the plat:

**GEO-HAZARD AREAS NOTE:**

THIS LONG PLAT HAS BEEN REVIEWED IN ACCORDANCE WITH THE WHATCOM COUNTY CRITICAL AREAS ORDINANCE, TITLE 16, CHAPTER 16.16, ARTICLE 3, ADOPTED PURSUANT TO ORDINANCE 2017-077. REGULATED GEOLOGICALLY HAZARDOUS AREAS HAVE BEEN IDENTIFIED AT THE SUBJECT PARCELS (EROSION AND LANDSLIDE HAZARD AREAS). FUTURE DEVELOPMENT ON ALL LOTS WILL BE SUBJECT TO THE CRITICAL AREAS ORDINANCE IN EFFECT AT THE TIME OF APPLICATION FOR THAT DEVELOPMENT.

**Habitat Conservation Areas and Wetlands**

53. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Natural Resources Division in the memo dated November 5, 2020 unless modified by that Department or appealed to the appropriate agency.
54. The maximum “Developed Area” proposed by the applicant for each lot and tract are shown in a table in the preliminary plat map. This table shall be moved to the Developers Agreement. The definition of “Developed Area” is in Section 2.1.5 of the Developer’s Agreement.
55. Prior to final plat all four documents combined as the Critical Area Assessment Report shall be amended to match these conditions and any amendments to the Developers Agreement approved by the County Council. The final documents shall contain a revision date.
56. No more than 10% of the 126-acre Property shall be developed or included in a “Developable Area” as defined by the approved Development Agreement. This condition shall be a required plat note with a reference to the auditor’s recording number.

57. No residential structure located on any Residential Lot on the Property shall exceed 2,900 square feet of conditioned living space ("Conditioned Living Space"). Conditioned Living Space shall include interior space within an enclosed structure intended for human habitation. This 2,900 square foot limitation on Conditioned Living Space shall not include garages or shops, nor shall it include covered exterior courtyards, covered walkways, gazebos, outdoor shelters, storage sheds, carports or similar open sided structures with water tight roof, or similar structures. This condition shall be a required plat note.
58. In total, the floor area of all buildings on a Residential Lot shall not exceed 4,000 square feet. Included in this limitation is the Conditioned Living Space, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings. This condition shall be a required plat note.
59. A maximum total of 500-square feet of footprint area of development will be allowed within the shore setback for each Residential Lot. This includes roof eaves, decks, patios, covered walkways, stairs, and accessory water-oriented structures without Conditioned Living Space.
60. The "Developable Area" on average shall not exceed 20% of the area of each individual lot. The average shall be determined at the time the Developer Agreement is approved and recorded.
61. For lots 1-7 and 8-16 remaining undeveloped areas, outside of the defined "Developed Area" shown on the site plan at the time of building permit shall be protected from further development using protective measures in Whatcom County Code in effect at that time of development. This condition shall be a required plat note.
62. The side-yard setback for all Residential Lots and Tract B and Tract C shall be fifteen feet (15'). This condition shall be a required plat note.
63. The shore setback for Residential Lots 1-7 shall be seventy feet (70') measured from the Ordinary High-Water Mark (OHWM). The shore setback for Residential Lots 8-16 shall be seventy-five feet (75') measured from the OHWM. Ordinary High Water Mark shall be determined at the time of future development, in accordance with published guidance by the Department of Ecology. This condition shall be a required plat note.

64. A conservation easement shall be recorded for all wetlands and wetland buffers within the plat.
65. Development required before final plat and all future development shall apply all habitat management recommendations in document titled "Habitat Management Plan". Joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020; as amended by an addendum to the report dated October 27, 2020 and date stamped the same herein or as amended The AF# of the document shall be recorded on the deed. The following plat note is required:
66. "FUTURE DEVELOPMENT SHALL APPLY HABITAT MANAGEMENT MEASURES AS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF#.
67. Future development shall be reviewed with the critical ordinance and shoreline master program in affect at the time of development, unless specifically amended by the Developers Agreement. The following plat note is required:
68. "LOTS 1-16 OF THIS LONG PLAT HAVE BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, CHAPTER 16.16 WHATCOM COUNTY CODE ADOPTED PURSUANT TO ORDINANCE 2017-0023 AS AMENDED. REGULATED CRITICAL AREAS ARE LOCATED WITHIN THIS LONG PLAT. A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR; AF FILE NO.\_\_\_\_\_. FOR WETLANDS AND ASSOCIATED BUFFERS. FUTURE DEVELOPMENT SHALL BE REVIEWED UNDER THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF# DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEMENT."
69. A mitigation plan may be required for future development permits, as required by the Critical Area Ordinance or Shoreline Master Program in affect at the time development. The following plat note is required:
70. "FUTURE DEVELOPMENT SHALL REQUIRE MITIGATION FOR IMPACTS TO CRITICAL AREAS AND CRITICAL AREAS BUFFERS IN ACCORDANCE WITH THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF# DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEMENT."
71. Trails on Tract C shall not cover more than 3% of the total area of the tract. No residential buildings or overwater structures are allowed on Tract C.

72. A building setback is required from all standard or modified wetland buffers, standard shoreline setbacks, and herbaceous balds in affect at the time of future development. This condition shall be a required plat note.
73. No stairs shall be constructed to provide access to the shoreline, provided that pedestrian access trails using natural materials (native stone, etc.) with minimal alterations to existing grade and vegetation may be permitted. This condition shall be a required plat note.
74. Individual overwater structures, except mooring buoys are prohibited. This condition shall be a required plat note.
75. No docks of any kind, including shared docks, shall be allowed in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
76. Shared overwater structures are prohibited in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
77. Up to six residential mooring buoys are allowed to be installed in Pleasant Bay to serve residential lots in the plat, otherwise mooring buoys are prohibited. This condition shall be a required plat note.
78. On Tract B, the on-site septic system (OSS) shall be placed at outside of the standard shoreline setback and the wetland or wetland buffer. The OSS shall be not placed in the building setback if tree roots will be impacted.
79. For residential lots, septic drain fields shall be placed at least 112' landward of the OHWM of marine waters.
80. Tree retention and replanting requirements in the approved Habitat Management Plan shall be applied to all future development
81. For each snag or live tree removed with pileated woodpecker excavations, a snag will be created within the lots or within the adjacent Reserve Tract A.
82. Clearing and Construction Associated with the maintenance yard on Tract A will not exceed 10,000 square feet in size.
83. Clearing and construction associated with the trails, restroom, and storage building shall not exceed 4,000 square feet.
84. Split rail fencing or similar exclusionary measures shall be required to be placed at the building setback along the road side off wetland A. Split rail fencing or similar inclusionary measures shall be required to be placed in order to prevent the public from entering wetland D, as determined to be applicable.,

85. Signage in accordance with WCC 16.16.265 shall be installed along herbeaceous balds, wetland buffers, stream buffers and the reduced shoreline buffer. The design of the signs shall be included in the final mitigation plan required prior to issuance of civil drawings.
86. Prior to civil drawing approval provide a final mitigation plan addressing the required recommendation in the approved Habitat Management Plan. The final mitigation shall show the increase of an additional 1,500 SF to the west side of Wetland D and provides 880 SF of buffer restoration to the areas temporarily impacted by a combination of replanting/transplanting with local native understory species and healing-in exposed soils with wood chip mulch.
87. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with locations of required wetland and habitat conservation area signage and fencing. A landscape section is required to be included in the civil drawing plan set to address fencing and signage locations
88. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with a bond quantity worksheet or bid from a licensed contractor. A landscape section is required to be included in the civil drawing plan set to address buffer replanting (location and a planting schedule).
89. Culvert or sleeve shall be installed under the road at each lot to allow for future development to install pressurized stormwater conveyance to be pumped in Tract A to allow for full dispersion and avoidance of impacts to slope stability. The locations of the culvert or sleeve shall be shown on the civil drawing. Inspection shall be required to verify installation prior to surfacing of the roadway.
90. Temporary fencing shall be installed along wetland D buffers prior to plat construction authorized under preliminary plat approval. Temporary fencing shall be shown on the civil plan sheet for TESC.
91. Prior to issuance of Civil Drawing approval Temporary Construction fencing shall be inspected and approved by Whatcom County Natural Resources.
92. Prior to construction associated with preliminary plat approval areas of disturbance Shall be demarcated by the applicant and verified by Whatcom County Natural Resources. Any unavoidable impacts shall be address as an addendum to the final Mitigation document and subject to surety and monitoring requirements.
93. Stormwater management is required for all residential lots in accordance with the Western Washington Stormwater Manual. In addition to the standards in the stormwater manual the following design amendments are required:
  - a. Spreader discharges that will be carrying road run-off shall be kept at least 116'

- landward of the OHWM, where feasible.
- b. Stormwater discharge from impervious surfaces with a flow path less than 116' shall be filtered through an engineered storm water treatment system with a 65% efficiency rate for phosphorus.
94. The following plat note shall be required:
- “FUTURE DEVELOPMENT SHALL BE REQUIRED TO MEET STORMWATER REQUIREMENTS IN THE CURRENT STORMWATER MANUAL APPROVED BY WHATCOM COUNTY IN ADDITION TO STORMWATER REQUIREMENTS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF# \_\_\_\_\_.”
95. The conceptual stormwater design for the plat and future development on residential lots has been approved without the need for additional outfalls. The final stormwater design shall not include new outfalls, which discharge directly or indirectly into the marine receiving waters. A downstream analysis determining the existing outfalls will not be receiving additional stormwater runoff shall be included in the final stormwater design narrative. A plat note restricting new outfalls will be required.
96. Future trail development within Tract B will require a separate land disturbance permit and will be subject to the Whatcom County Codes in affect at the time of the development. A comprehensive analysis for recreation development will be required from the applicant.
97. Prior to final plat approval the following is required:
- a. A conservation easement shall be recorded with the Whatcom County Auditor for all wetlands and wetland buffers within the plat.
  - b. Install split rail or other appropriate exclusionary measures along the building setback of herbaceous balds and required wetland buffer.
  - c. Educational signage and shoreline setback signage shall be installed. Educational signage regarding herbaceous balds shall be displayed on the fencing at each lot.
  - d. Wetland D shall be surveyed and its boundaries, along with the edges of its 100-foot buffer, shall be accurately shown on submitted checkprints.
  - e. Installation of mitigation as provided in the final mitigation plan. An as-built inspection for the approved mitigation will be required prior to final plat approval.

### **Shorelines – Long Subdivision**

98. Utilities shall be located within roadway and driveway corridors and rights-of-way

wherever feasible.

99. Design of structures shall conform to natural contours and minimize disturbance to soils and native vegetation to the extent feasible. Foundations shall be tiered with earth retention incorporated into the structure.
100. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
101. Any lighting along the proposed roadway/driveway corridors shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, or public areas to avoid infringing on the use and enjoyment of such areas, and to prevent hazards.

### **Shoreline – Shoreline Substantial and Conditional Use Permit**

102. The proposed shoreline developments shall be consistent with the scope detailed and approved by this substantial development permit and shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
103. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
104. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to commencing construction on the tender dock. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit.
105. In conformance with WCC 16.16.265, prior to issuance of the building permit, the applicant shall file a Notice on Title with the Auditor's Office. The notice shall be filed on forms provided by the County and a copy shall be provided to the shoreline administrator. This document is available online at:  
<http://whatcomcounty.us/DocumentCenter/Home/View/2205>.
106. Any change in the currently approved proposal shall receive further critical areas review and approval PRIOR to land disturbance.
107. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
108. Use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bed lands of marine shorelines unless

reviewed and approved by the Shoreline Administrator.

109. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
110. The gravel public access trail on Tract B shall be limited to 5' in width for all areas within the Habitat Conservation Area buffers. Additionally, trail improvements may be made waterward of the Ordinary High Water Mark.
111. Washington State Department of Ecology Water Quality Standards shall be maintained.
112. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
113. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment per 23.100.09.B.20.
114. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup.
115. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.
116. At the time of building permit submittal, a Temporary Erosion and Sedimentation Control (TESC) plan shall be provided. No ground disturbing activities shall commence until the TESC plan has been reviewed and approved by Whatcom County Planning and Development Services.
117. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
118. The project shall comply with all applicable federal, state and local laws and regulations. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
119. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic

Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

120. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
121. The location of the ordinary high water mark shall be shown on the construction plans submitted for the building permit.
122. A mono-pile design is required. Construction drawings submitted for the building permit shall demonstrate a mono-pile construction.
123. The distance from the landing to the first pile shall be the maximum feasible for a clear span of the supratidal zone and the distance between other piling shall clear span the rocky habitat, if feasible.
124. Pier decking and stair surfaces shall be entirely grated with functional grating.
125. The community pier shall not exceed six feet in width and 90 feet in length. The community float shall not exceed eight feet in width and 50 feet in length.
126. Functional grating shall be installed on 50% of the float. Grating shall not be located over flotation.
127. The float shall be anchored to the substrate using the minimum piles necessary, not to exceed three (3) piles.
128. Flotation shall be fully encapsulated in a shell. Shell must be designed to prevent break

up or loss of flotation material.

129. A small access float supporting the gangway to accommodate tidal fluctuation may be installed. The access float shall be no greater than 4 feet wide and 6 feet in length.
130. Float stops shall be installed, if the potential exists for grounding of the float.
131. Install ridge caps with bird spikes on top of the piles to minimize predation of prey species.
132. The width of gangway shall not exceed 4 feet. The gangway shall be entirely grated with functional grating.
133. To avoid impact to juvenile rockfish construction shall occur September 30 through March 15.
134. To avoid impacts to juvenile salmonids construction shall occur August 1 through February 15.
135. Conditions of the WDFW Hydraulic Project Approval, including mitigation shall be considered conditions of this permit.
136. If vibratory pile driving will be used than a narrative of standard operating procedures compliant with Army Corps of Engineers Regional General Permit 6 for construction in inland marine waters shall be provided at the time building permit submittal. The narrative must address marine mammals including pinnipeds and cetaceans for noise attenuation and in water affects.
137. A final mitigation plan shall be submitted at the time of building permit application addressing the recommended habitat management measures in addition to the required mitigation for the upland community dock landing and trail construction. The final mitigation plan shall include mitigation equivalent to the Army Corps of Engineers Regional General Permit Appendix B: Compensatory Mitigation Calculator.
138. For trail construction and community dock landing new impacts to the marine shoreline buffer shall be mitigated at a ratio of 1.25 to 1, unless specifically address in the approved habitat management plan.
139. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

## **Health Department**

140. The applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated September 9, 2020, unless modified by that Department or appealed to the appropriate agency.
141. OSS components and transport lines maintain required setbacks as stated in Whatcom County Code 24.05.100 including but not limited to roads, proposed stormwater facilities and drinking water lines.
142. If OSS easements are located under the road, OSS transport lines will need to be installed prior to road construction.
143. For those OSS located on different parcel than they serve (Tract A), individual OSS permit applications will be required and transport lines will need to be installed prior to final approval. For OSS located on Tract A, a natural resource assessment may be required prior to OSS permitting and installation.
144. Prior to final approval, the applicant will be required to provide water system design approval from the Washington State Department of Health and all water system infrastructure must be installed.
145. The applicant states in the SEPA checklist that there will be no groundwater withdrawal. The applicant must provide evidence of well decommissioning to WCHD prior to final plat approval.

## **Critical Areas**

146. Future development shall preserve 95% of the coniferous trees and 95% of the madrone trees with a DBH greater than 24 inches, or are older than 80 years of age.
147. A Class IV General Forest Practice Application for land Conversion is required prior to issuance of civil drawings for areas converted during construction activities authorized by the preliminary plat approval.
148. Future development will be required to obtain a land conversion permit at the time of development.
149. Trails are prohibited to traverse through herbaceous balds. This condition shall be a required plat note.
150. Prior to construction on any lots with an herbaceous bald habitat, a site inspection to ensure the construction setback is clearly established or demarcated is required.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF  
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 30<sup>th</sup> day of November 2020.



Michael Bobbink, Whatcom County Hearing Examiner



**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT**

**November 5, 2020**  
**Revised November 30, 2020\***

The application by **Governors Point Land, LP** for a Long Subdivision, Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Developers Agreement (Governors Point Long Subdivision)

LSS2018-00003, PLN2018-00016, SHR2018-00018, SHC 2020-00009 and SEP2018-00124  
**FINDINGS CONCLUSIONS,  
AND RECOMMENDATIONS**

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: Subdivision of 126 acres into one 98 acre non-residential tract to be owned and operated by the Whatcom Land Trust and 16 residential lots with associated infrastructure including roads, stormwater and fire utilities. Public water is proposed to be provided by the City of Bellingham. The lots will be served by individual onsite septic systems. A tender dock with a float, pier and gangway will be constructed on Pleasant Bay and improved gravel paths and an 800 square foot storage and bathroom building will be constructed within 200 feet of the shoreline.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, shoreline substantial development permit, a shoreline conditional use permit and development agreement, subject to conditions.

**II. TABLE OF CONTENTS**

- III. Preliminary Information
- IV. Site Description
- V. Project Proposal
- VI. Public Notice and Comment
- VII. State Environmental Policy Act
- VIII. Findings of Fact and Consistency Analysis
  - A. Roads and Bridges
  - B. Building and Fire Codes
  - C. Geologically Hazardous Areas
  - D. Habitat Conservation Areas and Wetlands
  - E. Zoning Code

\* This staff report has been revised to add recommended conditions of approval 146-150.

- F. Subdivision Code
- G. Shoreline
- H. Health Codes
- I. Development Agreement
- IX. Recommendation
- X. Recommended Conditions of Approval

### **III. PRELIMINARY INFORMATION**

#### **A. BACKGROUND INFORMATION**

Owner: Governors Point Land LP  
862 Peace Portal Drive, Suite 101  
Blaine, WA 98230

Agent: Wayne Schwandt  
965 Grand Blvd  
Bellingham, WA 98229

Surveyor: Jepson and Associates  
222 Grand Avenue, Suite C  
Bellingham, WA 98225

Engineer: Cascade Engineering Group  
119 Grand Avenue, Suite D  
Bellingham, WA 98225

Assessor's Parcel  
Numbers: 370236145506, 370225122040, 370225085132,  
370225115201, 370225093208, 370225095189,  
370225058223, 370225018180, 370225017225,  
370225002162, 370226486305, 370226531156, and  
370226509165

Zoning: Rural Residential (RR5A)

Comprehensive Plan: Rural

Subarea: Not applicable

Number of Lots: Sixteen residential lots and three non-residential  
tracts

Total Acreage: Approximately 126 acres

Roads: Private Road

Water Supply: City of Bellingham

<u>Sewage Disposal:</u>	Onsite septic systems
<u>Fire Protection:</u>	South Whatcom Fire Authority
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Bellingham Public Schools
<u>Topography:</u>	The site is varied with steep slopes and flat areas.
<u>Vegetation:</u>	Vegetation consists mostly of mature standing trees, young saplings and pasture grass.
<u>Adjacent Land Uses:</u>	North: Chuckanut Bay East: Single family residential South: Single family residential West: Bellingham Bay
<u>Utilities Easements:</u>	Necessary utility easements will be established prior to recording the final plat.
<u>Variances:</u>	No variances requested, except deviations outlined in the Development Agreement.
<u>SEPA Review:</u>	Mitigated Determination of Non-Significance was issued on June 18, 2020.

B. AUTHORIZING ORDINANCES:

1. Revised Code of Washington Chapter 58.17
2. Revised Code of Washington Chapter 36.70B.170
3. Whatcom County Comprehensive Land Use Plan
4. Whatcom County Code Chapter 2.33, Permit Review Procedures (repealed ordinance 2018-032)
5. Whatcom County Code Chapter 12.08, Development Standards
6. Whatcom County Code Chapter 15, Building Code
7. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
8. Whatcom County Code Chapter 16.16, Critical Areas
9. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
10. Whatcom County Code Title 21, Subdivision Regulations
11. Whatcom County Code Title 24, Health Regulations

#### **IV. SITE DESCRIPTION**

The project area consists of an approximately 126 acre parcel off Pleasant Bay Road. The property is a peninsula and is surrounded on three sides by Pleasant Harbor, Chuckanut Bay and Bellingham Bay. The site is currently undeveloped with mostly mature forest. An existing gravel road provides access through the site. Wetlands have been identified onsite; however the wetlands are located within Tract A and are proposed to be dedicated to the Whatcom Land Trust. The property is Rural Residential (RR5A).

#### **V. PROJECT PROPOSAL**

As shown on the preliminary plat map (Preliminary Plat Map (pages 1-4), September 3, 2020), the Governors Point subdivision proposal includes sixteen (16) clustered residential building lots and one reserve tract. The property is located in the Rural Residential (RR5A) zone which allows one single family residential unit per five areas. The applicant has chosen to cluster the development and will leave approximately 98 acres in the reserve area. The cluster lots will range in size from 0.91 – 2.01 acres in size and will be created along the western portion of the site (along the Samish Bay marine shoreline). To serve the subdivision, a private road will be constructed with access to Pleasant Bay Road.

The reserve area (Tract A) will not contain a residence and, as proposed by the owner, will be deeded to the Whatcom Land Trust (WLT) as a Nature Reserve. Development of the reserve area will occur after final approval of the subdivision and creation of the lot. Once transferred, the WLT will provide two miles of non-motorized walking trails and trail access to beaches on both Pleasant and Samish Bays. Permitting for development on the reserve area will occur separate from this subdivision application.

The subdivision will create two additional tracts for development. Tract B will be approximately an acre and include a float, pier and gangway on Pleasant Bay, improved gravel paths and 800 square foot storage and bathroom building. The tender dock will be for temporary loading and unloading purposes only and will include float, pier and gangway. Tract C will be located on the Samish Bay side of the property and provide access to the marine shoreline.

The applicant has agreed to limit the maximum developable area on the lots and tracts. Each lot and tract has been assigned a maximum developable area which, for purposes of this subdivision shall include the following: buildings, ornamental landscaping and structures including roofs, driveways, courtyards, covered walkways, and outdoor shelters as specified in the Section 2.1.7.2 of the Development Agreement.

The following table outlines the preliminary developable area per lot:

Lot/Tract	Lot/Tract Size (SF)	Lot/Tract Size (acre)	Maximum Developable Area	
			Total Area (SF)	Total Area (Percent)
1	39,688.1	0.91	10,032	25%
2	77,477.9	1.78	10,867	14%
3	87,847.3	2.01	17,198	20%
4	71,836.0	1.65	16,268	23%
5	56,405.6	1.29	12,075	21%
6	53,378.6	1.23	11,021	21%
7	60,771.1	1.40	14,185	23%
Tract C	44,808.6	1.03	1,560	3%
8	64,884.0	1.46	11,042	17%
9	81,675.8	1.88	17,923	22%
10	75,579.4	1.74	14,900	20%
11	54,579.4	1.25	10,695	20%
12	60,786.7	1.40	9,100	15%
13	48,696.3	1.12	9,230	19%
14	57,800.4	1.33	10,200	18%
15	54,620.5	1.25	13,554	25%
16	85,878.8	1.97	14,436	17%
Tract B	47,246.5	1.08	4,951	10%
Tract A	4,271,058.0	98.05	262,822	6%
Lot Average	64,471.1	1.48	12,670	19.9%
<b>Total Governors Point:</b>		<b>126.98</b>	<b>5,531,249</b>	<b>8.5%</b>

\* Please note this table is preliminary. Final square footages will be determined after construction and final survey work has been completed. Staff will review the final table for consistency with the no-net-loss analysis.

Water will be served by an extension of water service from City of Bellingham through a Wholesale Water Service Agreement. A Group A Water System will be created and will be owned and operated by the Governors Point Homeowners Association. The system will be regulated by the Washington State Department of Health. Sewage will be treated either by individual onsite septic systems located on the lots or within an easement on the Reserve Tract (Tract A).

In addition to the plat maps, two additional site plans have been submitted (Preliminary Plat Map (pages 5 and 6), September 3, 2020). These site plans are illustrative in that they depict potential residence locations, driveways, soils for septic systems and stormwater treatment. These plans are not the approved locations for any development and individual building permits and review will be required at the time of development.

In summary, the applicant is proposing to deviate from development standards for the following items:

- Reduce the shoreline setback from 150 feet to 70 feet for lots 1-7 and 75 feet for lots 8-16. Site specific setbacks, including steep slope setbacks will be determined at the building permit; and
- Allowance of up to 500 square feet of development in the shoreline setback.

As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement (Attachment A) process to mitigate potential impacts. The applicant has proposed the following:

- Create a 98 acre parcel to be permanently protected as open space;
- Reduce the number of residential lots from 25 to 16;
- Limit development to less than 10 percent of the total site; the entire site is a single watershed;
- Limit development to a 20% average for the residential lots.
- Preserve remaining area of each lot through a conservation easement at the time of future development.
- Limit residential structure to less than 2,900 square feet conditioned living space as defined as interior space within a closed structure intended for human habitation;
- Limit total floor area to less than 4,000 square feet per lot which includes the interior of garages, storage sheds, carport or similar open-sided structures; and
- Prohibit shared docks except on lot 16 and Tract B.

**Noted Submitted Plans/Map data/Reports (see exhibit list for all items)**

Preliminary Plat Map (Sheets 1 – 4), Jepson and Associates, September 3, 2020.

Preliminary Plat Map (Sheets 5 and 6), Jepson and Associates, September 3, 2020.

Site Plan Review Technical Memorandum, Associated Earth Sciences, Inc., March 13, 2020.

Wetland and Habitat Conservation Area Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Conservation Areas No Net Loss Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Management Plan, Cantrell and Associates, Inc., Revised January 25, 2020.

Governors Point Long Plat Road and Utilities Schematic (Sheets C1-C23), Cascade Engineering Group, P.S., Inc., January 14, 2020.

Eelgrass Survey Marine Vegetation Assessment, Tract B Governors Point Long Plat, Fairbanks Environmental Services, Inc., January 6, 2020

Governors Point Project Narrative, revised August 14, 2019.

Steep Slope Setback Technical Memorandum, Associated Earth Sciences, Inc.,  
October 11, 2019.

Governors Point Residential Subdivision, Whatcom County, Washington, Stormwater  
Site Plan, Cascade Engineering Group, P.S., Inc., Revised July 9, 2019.

Archaeological Assessment for the Governors Point Residential Development,  
Bellingham, Whatcom County, Washington, Drayton Archaeology, June 3, 2019.

Governors Point Development Traffic Impact Analysis, Gibson Traffic Consultants,  
Inc., June 2019.

Geotechnical Assessment Report, Associated Earth Sciences, Inc., October 29, 2018

## **VI. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 22.05.070.

Determination of Completeness: The determination of completeness was issued on  
January 14, 2019 for the subdivision, shoreline substantial development permit and  
development agreement.

The shoreline conditional use permit was determined complete on September 17,  
2020.

Notice of Application: The Notice of Application for the subdivision, shoreline  
substantial development permit and development agreement was published on  
January 28, 2019. Notice was also mailed to property owners within 1000 feet of the  
site.

A Revised Notice of Application to include the shoreline conditional use permit was  
published on September 21, 2020. Notice was also mailed to property owners within  
1000 feet of the site and emailed to any party who commented through the initial  
Notice of Application comment period and through the SEPA comment period.

Public Input: During the public comment period for the Notice of Application, SEPA  
and the Shoreline Conditional Use permit the County received numerous written  
comments. Staff also had counter discussions and phone calls with other concerned  
citizens. Please note the public comments are in five exhibit documents organized by  
dates of receipt by staff.

The following is a summary of the comments received and staff's responses to those  
comments:

- Concerns regarding development of the 98 acre Nature Reserve, including public

access, traffic, parking, trails, impacts to wildlife, rock slides, and need for public access. Concerns regarding ability of the WLT to run and operate a public park.

*Development of the Nature Reserve will be reviewed under future permits and will include review under the State Environmental Policy Act. Additional studies will include, but are not limited to traffic reports, recreational impact on ecosystems analysis, habitat conservation areas, wetlands, shorelines, geologically hazardous areas and archaeology.*

- Assurances of home locations

*All 16 residential lots front the Samish Bay and Tracts will not be further subdividable. Final locations of home sites has not been determined through this subdivision and development agreement; however, recommended conditions of approval will require compliance at the time of individual building permit with the following: Development Agreement, stormwater, access, fire and building codes, OSS requirements, shorelines, habitat conservation areas, wetlands and geologically hazardous areas. Additionally, recommended plat notes will restrict development onsite to less than 2,900 square feet of "conditioned living space" and less than 4,000 square feet of total floor area. Finally, as outlined in the Maximum Developable Area table included in the Project Description section (Section V), each lot will be restricted in total area of development including, but not limited to, driveways, roads, structures and landscaping.*

- Impacts to views

*Residential development of the site will occur on the western portion of Governors Point. No residences will be located along Pleasant Bay. Development of the lots will be restricted to no more than 4,000 square feet of total floor area and each lot will include additional maximum developable areas. These restrictions will retain much of the existing tree canopy and reduce overall impacts to views to the water and from the water.*

- Need for a secondary access

*Whatcom County Public Works Engineering Services and the Whatcom County Fire Marshal's Office reviewed relevant code and the traffic impact analysis. No secondary access is required.*

- City water

*The proposed subdivision is serviced by a municipal water system. The City of Bellingham has entered into a contract for a Wholesale Water Service Agreement between the City and Governors Point Land LP. The contract is specific to service for sixteen new residence and two supplemental non-residential connections. No additional services will be allowed through that contract.*

- Emergency response issues including fire hydrants

*Fire hydrants are required and are shown on the preliminary road and utility plans. The hydrants are located every 1000 feet along the access road. The fire hydrants will protect residences, traffic hazards and wildland fires. In addition to the fire hydrants, there are several fire apparatus turnouts and there are fire apparatus turnarounds at both ends of Road B and at the terminus of Road A.*

*Individual single family residences will be reviewed at the time of development for compliance with applicable fire codes; additional fire apparatus turnarounds and/or sprinkling may be necessary.*

- Adequacy of Pleasant Bay Road and State Route 11 (Chuckanut Drive).

*Pleasant Bay Road is a County maintained, Urban Local Access road, with an average daily traffic (ADT) of 62. According to the road mitigation determination, Pleasant Bay Road has sufficient width to support the additional proposed traffic. No additional road widening or improvements are required.*

*In addition, the Washington State Department of Transportation (WSDOT) reviewed the submitted traffic impact analysis and has no additional comments or conditions regarding the residential development.*

- Wildland fire issues

*As noted above, the applicant will be required to install fire hydrants.*

- Accessory dwelling units

*The applicant has not requested Accessory Dwelling Units (ADU's) and staff has not reviewed the possibility of ADU's within this subdivision. Pursuant to WCC 20.32.132, subdivisions are required to be marked as eligible for an ADU at the time of platting. This plat will contain no eligibility note, and therefore ADU's will not be permitted unless a future plat alteration is granted*

- Stormwater discharge

*The applicant has submitted a Preliminary Stormwater Site Plan Report which identified best management practices (BMPs) to address runoff from impervious surfaces in order to prevent erosion and minimize pollution from sediment in the runoff. Among many options, the engineer is choosing to utilize compost amended vegetated filter strips (CAVFS) to treat and disperse plat road runoff. No direct stormwater outfall is proposed or permitted through this application. Each lot is required to manage all impervious surface in accordance with the Whatcom County approved stormwater manual and additional requirements in the approved Habitat Management Plan. The residential systems are required to meet full dispersion or infiltration.*

- OSS locations

*The applicant submitted an Onsite Sewage System Subdivision Application with the Whatcom County Health Department on July 10, 2019. The subdivision application identified adequate soils located outside of shoreline setbacks and regulated critical areas. The OSS will be located at least 100 feet from the shoreline as required by WCC 24.05.100 and will meet all applicable OSS requirements at the time of individual OSS application. In addition to WCC 24.05.100 the approved Habitat Management Plan requires OSS to be placed 112' from the shoreline.*

- Need for additional wildlife, bird and marine studies. Impacts to Great Blue Heron habitat.

*The applicant has submitted a Habitat Management Plan, which address impacts to critical areas and priority species for development of the plat. The Habitat Management Plan will be recorded on title for each residential lot. Individual overwater structures, other than 6 mooring buoys are prohibited. The permit for construction of the community dock has been conditioned to use the most current methodology to minimize impacts to the nearshore such as, function grating, mono-pile design, construction materials that do not contain prohibited preservatives, and distance between pile to clear span sensitive supratidal and intertidal areas, and the proposed location avoids impacts to eelgrass*

- Mitigation for float, gangway and pier on Pleasant Bay

*The permit for construction of the community dock has been conditioned to use the most current methodology to minimize impacts to the nearshore such as, functional grating, mono-pile design, construction materials that do not contain prohibited preservatives, and distance between pile to clear span sensitive supratidal and intertidal areas, and the location avoids impacts to eelgrass and impacts to other macro algae will be temporary and should recover in a single growing season.*

- Concerns regarding safety of moorage and buoys

*A separate shoreline permit will be required for installation of the mooring buoys. Future mooring buoys installation will follow recommend methodology of Army Corps of Engineers, Washington Fish and Wildlife, and the Whatcom County Shoreline Management Program. Mooring buoys will be required to be marked for visibility, anchored to the seafloor, and use a mid-line float to reduce impacts to the seabed and reduce chafe.*

- Adequacy concerns regarding "no net loss of shoreline ecological functions"

*The approach for developing Governors Point was to use a watershed scale holistic view and incorporate landscape ecology principles. To meet no net loss a series of habitat management strategies were developed in the approved habitat management plan. When summed together this approach preserves watershed functions, forest*

*ecological functions, and nearshore functions. Governors Point is a single watershed as determined by Hydrogeologist Chuck Lindsey. The overall development within this watershed will be less than 10%; the threshold where watershed hydrology, habitat, and species have been shown to decline. Development is limited to an average of 20% of total lot size. This maintains at least 80% forest canopy. Studies have shown a species declines when more than 20% of the canopy is removed.*

*The 4,000 square foot maximum floor area will preserve wildlife corridors. Using the watershed and terrestrial forest function as a proxy for individual habitat conservation areas and species, no net loss of ecosystem functions and ecosystem wide processes is achievable.*

- Availability of documents

*Throughout permitting, many of the documents have been made available online at <http://www.whatcomcounty.us/3032/Governors-Point-Long-Subdivision>, and documents have been made available upon request. The Staff Report and exhibits have been issued two weeks prior to the public hearing date to allow additional time for public review.*

- Adequacy of SEPA comment period and public process

*During the SEPA comment period, several commenters requested the comment period be extended. Whatcom County code has no provisions for extension of the SEPA comment period and declined to extend the required fourteen day comment period (WCC 16.08.128 and WAC 197-11-340).*

*Staff has continued to receive comments regarding the project and will continue to forward any comment received to the appropriate staff person for review as well as the Whatcom County Hearing Examiner for inclusion in the official record.*

- Archaeology

Tamela S. Smart, M.A., a representative from Lummi Nation Tribal Historic Preservation Office (LNTHPO) submitted the following comments:

We recommend that work proceed on lot 18 (16) but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO would like an opportunity to review and comment on the Monitoring and Inadvertent Discovery Plan (MIDP) before the project begins.

We recommend that work proceed on lots 1-17 (1-15) with DAHP's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation should be included in the IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

*These comments were written using a previous version of the preliminary plat map. The correct lots numbers are in parentheses. These comments were recognized as SEPA mitigating conditions.*

- Code, covenants and restrictions and ownership

*The applicant provided a draft codes, covenants and restrictions (CC&R's) document at the time of application. The draft included some language regarding the possibility of multiple ownerships for individual lots. The applicant has provided updated CC&R's and this language has been removed. It appears as the intent is one owner per lot and no condominium-style ownership of the lots.*

- Vesting of dock permit

*Through the review of the proposal, it was determined a Shoreline Conditional Use Permit would be necessary for the dock. The applicant applied for the shoreline conditional use permit on September 17, 2020 and the application was noticed on September 21, 2020. The shoreline conditional use permit is combined with the long subdivision, shoreline substantial development permit and development agreement as one consolidated hearing, pursuant to WCC 22.05.030.*

- Impacts to Chuckanut Wildlife Corridor

*The plat has been conditioned to develop less than 10% of the total acreage of the proposed long division. As proposed, plat development is 8.5%. Studies have shown loss of hydrologic function and ecosystem function when watersheds contain greater than 10% of developed area. In addition, other studies on forest ecology have determined species abundance and diversity decline when greater than 20% of the tree canopy is removed. The plat has been conditioned to on average contain a maximum of 20% developed area. The approved habitat management plan and conditions of approval contain additional habitat management strategies to minimize overall impact to the Terrestrial Forest and Marine Riparian Zone.*

- Support for the proposed subdivision and dedication of land to the Whatcom Land Trust.

*Positive comments were also received for this project. Several respondents noted this proposal was a balance between development of the site for single-family residences and preserving a large portion of Governors Point for wildlife and future public access. The following Whatcom County Comprehensive Plan Goal was referenced as confirmation of the importance of Governors Point in the Recreation Element of the Comprehensive Plan:*

Goal 9E: Recognize the shoreline as one of Whatcom County's unique assets and provide adequate physical and visual access for present and future generations.

Policy 9E-1: As economically feasible, acquire for public use as much of the saltwater shoreline as possible. Public and private resources should be explored to further this policy. A reasonable goal is to acquire for public access a minimum of 15% of the saltwater shoreline and adjacent tidelands in Whatcom County.

Please also see *Section VIII. Findings of Fact and Consistency Analysis* for additional and more detailed response to public comments.

Notice of SEPA Threshold Determination: The SEPA Mitigated Determination of Non-significance (MDNS) for this project was issued on June 18, 2020. The notice was sent to state and local agencies, and interested parties for the project. No appeal of the threshold decision was submitted.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site, emailed to interested parties, and the notice was included in a one-time newspaper publication.

## **VII. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project.

A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on June 18, 2020. The following was added as a SEPA mitigating condition:

Adverse impacts by the proposed development can be caused at the commencement of construction. Therefore, the Whatcom County SEPA Official finds that, pursuant to Substantive Authority, as allowed by WCC 16.08, the following SEPA mitigating conditions shall be required as a condition of the permit:

1. As recommended in the Archaeological Assessment for the Governor's Point Residential Development, Bellingham, Whatcom County Washington (Report 0519C) by Drayton Archaeology, dated June 3, 2019; archaeological monitoring done by a qualified professional shall occur during construction of the trail and dock on the Reserve Tract near 45WH501.
2. Work may proceed on proposed reserve tract but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO shall review and comment, if necessary, on the Monitoring and Inadvertent Discovery Plan (MIDP) before the construction begins.
3. Work may proceed on proposed lots 1-16 with DAHP's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation shall be included in the

IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

No appeal of the MDNS was filed.

## **VIII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Roads and Bridges (WCC Chapter 12.08)**

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations. Engineering Services reviewed the proposal and submitted a memo dated October 29, 2020 with the following discussion:

Public Works Engineering Services (PWES) has reviewed the proposal for a 16-lot residential subdivision with two non-residential tracts, and a reserve tract to be donated to the Whatcom Land Trust as a nature reserve (approximately 98-acre).

The proposed development must demonstrate conformance with Whatcom County Code (WCC) and Whatcom County Development Standards (WCDS). The following findings and recommended conditions are based on documents that have been submitted for review. Any changes to the proposed plat (lot configuration, easements, ADUs, etc.) may modify these conditions.

#### Findings of Fact:

1. The applicant has submitted a written request for a private road to serve the plat. The criteria of WCDS 505.E for a private road were met and the private road request has been approved by the County.
2. The subdivision will access Pleasant Bay Road, a County maintained road with Urban Local Access classification and an average daily traffic (ADT) count of 62 [2020]. Pleasant Bay Road is a paved road that varies in width from 20 to 21.5 feet wide. According to road mitigation determination per the Development Standards, Pleasant Bay Road has sufficient width to support the additional proposed traffic; no road widening or other County road improvements are required.
3. The applicant has submitted a certified Traffic Impact Analysis by Gibson Traffic Consultants stamped by a Registered Professional Engineer in the State of Washington, dated June 2019. The report includes traffic counts and

justification for proposed average daily traffic assumptions and the low volume sight distance approach applied to the access for the site. The additional proposed traffic is 93 ADT. The report has been reviewed by PWES and approved by the County.

4. The development proposes to add 8 PM Peak Hour Trips, as documented in the reviewed and approved Traffic Impact Analysis. This is below the threshold for further concurrency review. PWES has issued a certificate of Exemption from Concurrency for this project.
5. The applicant submitted a Preliminary Storm Water Site Plan Report prepared by the Cascade Engineering Group. PWES has reviewed and accepted the preliminary design in this report and subsequent addendums received through requests for additional information. Stormwater from the site will drain to Chuckanut and Pleasant Bays.
6. The engineer will utilize best management practices (BMPs) to address runoff from impervious surfaces in order to prevent erosion and minimize pollution from sediment in the runoff. One of the BMPs the engineer plans to utilize to treat and disperse plat road runoff is compost amended vegetated filter strips (CAVFS). This is basically a widened shoulder strip along the road that is vegetated and has amended soil. The engineer has requested a design exception from the maximum slope of the contributing roadway criteria typically applied for this BMP. The engineer has submitted calculations and narrative to justify efficacy of this request and PWES has reviewed and granted preliminary approval for up to 15% resultant slope for this BMP on this project.
7. The geotechnical engineering consultant AES Inc. has submitted an assessment of the site suitability for this residential development and preliminary on-site storm drainage design. In their technical memorandum dated 3-13-2020 AES opines the lots as currently proposed are suitable for residential development, subject to site-specific recommendations. Further, AES supports that the site topography and composition could support dispersion on vegetated slopes 15-40%. This lends support to the preliminary storm design, which will need geotechnical support for dispersion applications proposed on slopes greater than 15%.
8. Engineering Services has reviewed and approved the applicant's requests for variance from standards for these design points:
  - a. 20' minimum roadway width, inclusive of shoulders
  - b. 40' access and utility easement
  - c. 20mph speed limit for residential Road B, and associated reduced radius curves

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 12.08.*

## **B. Building and Fire Code (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

WCC Title 15 adopts and amends the applicable fire codes. The Fire Marshal is authorized to promulgate such rules, policies and/or procedures as deemed necessary for safety, designated in IBC Section 103.1, and hereby referred to as the Office of the Fire Marshal.

The Whatcom County Fire Marshal submitted a memo dated September 22, 2020 with additional conditions of approval.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.*

## **C. Geologically Hazardous Areas (Article 3) – Title 16**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

*Whatcom County Staff Geologist provided the following analysis in a memo dated November 2, 2020.*

The subject parcels associated with the proposed long plat application contain landslide and erosion hazard areas regulated pursuant to Whatcom County Code (WCC) 16.16.310, 3.25 and .355. Hazard areas are primarily located along the southwestern and north perimeter of Governor's Point. Development activity in or adjacent to a regulated landslide or erosion hazard area is subject to the development standards of WCC 16.16.320, 16.16.325, 16.16.330, and 16.16.335.

### **Geologic Hazard Review**

The long plat application materials included a professional assessment of potential hazards titled '*Geotechnical Assessment Report*' prepared by Associated Earth Sciences, Inc. (AESI), dated October 29, 2018. The assessment contains a general summary of pertinent geologic hazards posed to each proposed lot, and concludes that the long plat has been configured appropriately to safely allow development utilizing conventional geologic hazard mitigation measures such as building and shoreline setbacks, geotechnical foundation engineering, construction best management practices and erosion and sediment control measures.

Additional geotechnical and geohazard review was performed by AESI, and is presented in technical memoranda titled '*Steep Slopes Setback*' and '*Site Plan Review*,' dated October 11, 2019, and March 13, 2020, respectively. The former memorandum re-confirmed AESI's conclusion that, as configured, the proposed long subdivision allows suitable setback to prevent detrimental impacts on and off site from any potential or active landslide hazard areas, but that site specific analysis would be required to identify appropriate setbacks and mitigating measures appropriate for future development plans. The latter memorandum reiterates the suitable configuration of the long subdivision, subject to 'site-specific recommendations prepared for each lot at the time of building permit application.' The latter memorandum also addresses the suitability of stormwater disposal in proximity to potential or active landslide hazard areas and concludes that dispersion systems are generally suitable for disposal of stormwater generated by proposed impervious surfaces subject to site-specific recommendations prepared for each lot at the time of building permit.

### **Public Comments – Landslide Hazards**

Public comments were received that cited potential landslide and erosion hazards as concerns for approving the proposed long subdivision. Multiple commenters referenced a landslide that occurred on the northeast side of Governor's Point on March 12, 1991. Review of photos provided by one commenter indicate that the landslide would be more accurately termed a rock slide, as the slope failure occurred within the underlying Chuckanut Sandstone, and failed on a preferential plane of weakness that dips towards the bluff face. Observations made during field reconnaissance, as well as review of structural measurements recorded on the Geologic Map of the Bellingham 1:100,000 Quadrangle (Lapen, 2000), confirm that Chuckanut Sandstone bedding is preferentially oriented along the north shore of Governor's Point for this type of failure mechanism. No development aside from the public dock is proposed near steep slopes that may be susceptible to this mode of failure.

As recommended by AESI residential development at each respective parcel shall be subject to site-specific exploration and mitigating recommendations, which will include evaluation for potential rock slide hazards due to structural discontinuities. While it doesn't appear that Chuckanut Sandstone bedding is preferentially oriented for rock slides on the west aspect of Governor's Point, other structural discontinuities such as jointing and faulting may persist at one or more lots. Such conditions would be regulated as potential landslide hazards pursuant to WCC 16.16.310(C.1.a.vii), but as concluded by AESI sufficient room is present to setback residential development at each proposed parcel as necessary to avoid impacts to or by potential geologic hazards.

### **Stormwater Disposal**

Review of the proposed stormwater treatment and disposal system was also reviewed for potential landslide and erosion hazard area impacts. Conceptual stormwater designs were submitted that proposed dispersion at each lot. In

accordance with AESI recommendations, dispersion trenches were sited at each proposed parcel to accommodate a '50-foot vegetated flow path on slopes shallower than 40 percent'. At some parcels the location of the conceptual dispersion trench alignment may encroach on landslide hazard area setbacks to be defined at the time of development based on site-specific analysis. In order to accommodate the potential that suitable stormwater dispersion locations cannot be identified during site-specific analysis, a condition of approval has been included that the final civil plans shall include a utility easement that would allow stormwater to be collected and conveyed to discharge east of the access drive; thereby ensuring impacts may be avoided.

Similar accommodations have been included for septic drainage. Further necessitating the stormwater utility easement allowing access to Tract A is the Habitat Conservation Area and Wetland condition that prevents stormwater outfalls from discharging 'directly or indirectly into the marine receiving waters.' Outfall pipes that convey stormwater to the toe of an unstable coastal bluff are a common mitigation measure for avoiding impacts to regulated landslide hazard areas, but Staff was of the opinion that such development would be a detriment to the shoreline, thus necessitating the stormwater utility easement and associated condition.

### **Habitat Conservation Management Plan and No Net Loss Analysis**

The Habitat Conservation Management Plan and No Net Loss Analysis, authored by Cantrell and Associates, Inc. (CA), dated January 25, 2020, presents an assessment of potential impacts to ecological functions due to development of the proposed long plat. Included in the analysis are the functions provided by hydrology and slope stability, which are described as offering the primary benefit of 'preserving ongoing natural sediment inputs to waters and to protection of infrastructure.' The assessment is based on Griggs, et al (1992), as cited in Macdonald and Witek (1994), which defines the appropriate setback to provide similar ecological function based on bluff height and slope stability.

To complete the analysis CA interprets coastal bluffs on the west side of Governor's Point as 'stable.' The resulting setback based on this interpretation amounts to a 1(Horizontal):1(Vertical) projection from the toe of the slope, such that the appropriate setback to preserve the ecologic function of hydrology and slope stability is equal to the slope height. For moderately stable slopes, as is likely more appropriate for some of the southern parcels, the resulting setback would be a 2(H):1(V) projection from the toe of slope, or twice the prescriptive setback relative to a stable slope.

In their assessment CA justifies their approach based on AESI's interpretation that sufficient development setbacks are possible at each proposed parcel to avoid or mitigate for potential hazards, as well as a stable designation for the west shore of Governor's Point as depicted on the Washington State Department of Ecology Coastal Atlas. The author concludes that a reduced setback will provide similar

function with respect to hydrology and slope stability, as compared to the standard 150 foot shoreline setback, presuming geotechnical recommendations are prepared and implemented during site development and construction. By this methodology, prescriptive setbacks are essentially supplanted by site-specific setbacks tailored for each lot and proposed scope of development.

While Staff does not concur that the southern lots should be classified as stable, setbacks will ultimately be based on site-specific geotechnical analysis prepared by a qualified professional, and will include Best Management Practices and other mitigation measures intended to ensure detrimental impacts to hydrology and slope stability do not result. As a result, Staff agrees that ecological functions provided by hydrology and slope stability will be preserved.

## **Discussion**

The proposed long plat has been reviewed by a qualified professional in accordance with WCC 16.16.375 and has been shown feasible, as configured, to avoid detrimental impacts to regulated geologically hazardous areas as required by WCC 16.16.320(I). However, due to the presence of regulated landslide and erosion hazards at many of the proposed parcels, the assessment of feasibility is conditional based on site-specific analysis of development plans proposed at the time of building permit application. Plat design elements have been included to ensure impact avoidance is feasible, and include sufficient buildable space to accommodate reasonably conceivable slope setbacks for constructed improvements, and stormwater and septic easements to allow discharge to the east of the access road if deemed necessary following site-specific analysis.

For these reasons it is recommended the proposed long plat receive preliminary approval in consideration of Article 3 of the Whatcom County Critical Areas Ordinance, subject to the following conditions and inclusion of the Geo-hazard Plat Note provided.

## **D. Habitat Conservation Areas and Wetlands (Article 6 and 7) – Title 16**

The long subdivision application has been routed for review for conformance with the WCC 16.16 Critical Area Ordinance. The entire CAO applies to this project; this memorandum review focuses the critical area assessment report, critical area protective measures, and compensatory mitigation in the general requirements (Article I & II), wetlands (Article VI) and fish and wildlife habitat conservation areas (HCA) (Article VII).

## **Staff Analysis**

Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded

resources such as wetlands, riparian stream corridors or habitat, where possible. The review applied the entirety of chapter 16.16 WCC to the proposal as applicable. This analysis reviews specific provisions, which summarize the standards, guidelines, criteria, and requirements of Chapter 16.16 WCC. For this staff report the acronym HMP references the combination of documents, conditions of approval, and the Development Agreement, which as a whole provide all the habitat management strategies necessary to demonstrate compliance with WCC 16.16.

### ***WCC 16.16.225 – Regulated Activities***

As conditioned, the proposal is consistent with WCC 16.16.225(B)(4) and (6).

The applicant has submitted a Habitat Management Plan consistent with alternative mitigation plan provisions in WCC 16.16.261. The proposed long subdivision employs a number of measures to avoid and minimize impacts to critical areas and critical area buffers. These measures include:

- Retiring nine (9) development densities;
- Placing 98 acres of terrestrial forest area in a reserve tract designated as open space;
- Clustering of the 16 residential lots to the Samish Bay side of Governors Point;
- Limiting development in the Governors Point Watershed to less than 10%;
- Limiting development of the residential lots on average to less than 20% which includes ornamental landscaping;
- Limiting total lot development to 4,000 square feet of interior space;
- Limiting ornamental landscape to a maximum of 10% of lot area; and
- At the time of future develop each lot will also record a conservation easement on the remaining area outside of the approved development to protect upland ecosystem functions, priority habitats and provide wildlife corridors.

### ***WCC 16.16.250 – Submittal Requirements and Critical Areas Review Process***

The applicant submitted for review four documents that together, meet the requirements of a complete critical area assessment report (CAAR). The combined documents are titled:

1. "Wetland & Habitat Conservation Areas Assessment" joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and submitted February 6, 2020 as amended by an addendum to the report dated October 27, 2020 and date stamped the same.
2. "Habitat Conservation Areas No Net Loss Assessment Governors Point" joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020.)
3. "Eelgrass Survey Marine Vegetation Assessment Tract B Governors Point Long Plat" authored by Fairbanks Environmental. Cover dated January 6,

2020 and submitted February 6, 2020, as amended by an addendum to the report dated October 27, 2020 and date stamped the same.

4. "Habitat Management Plan" (HMP). Joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020; as amended by an addendum to the report dated October 27, 2020 and date stamped the same.
5. "Addendum for: Wetland & Habitat Conservation Areas Assessment (revised January 25, 2020), Habitat Conservation Areas No Net Loss Assessment (revised January 25, 2020), Habitat Management Plan (Revised January 25, 2020). Cantrell & Associates. Dated and submitted 10/27/2020.

In addition, the applicant provided an addendum to reports 1-3 addressing agreed to terms in the Agreement dated October 27, 2020.

Document 1 and 3 addresses the inventory and characterization of the project areas. These documents identify the presence and absence of Growth Management Act critical areas, nearshore habitat and species, and provides an existing condition analysis of the uplands and nearshore habitat.

Document 2 addresses marine riparian ecological functions and ecosystem wide processes to characterize the effect of reducing the shoreline setback from 150 feet to 70 or 75. The analysis looks at nine primary functions of the marine riparian area and scores the function based on site-specific tree height (SPTH) and setback from the ordinary high water mark. Washington State Fish and Wildlife (WDFW) in Riparian Management Volume 2 propose the approach of using SPTH to represent ecological function and ecosystem wide processes.

Document 4 provides mitigation measures for project design, protective measures, stormwater management and compensation for unavoidable impacts to minimize or compensate for impacts to critical areas and their buffers. The recommended habitat management measures together with the conditions of approval meet no net loss of ecological function and ecosystem wide processes.

When fully implemented, the conditions of approval will provide the required documentation to approve the combined CAAR.

Document 5 is an addendum to the entire Critical Area Assessment Report to match the agreed to terms in the Developers Agreement.

### ***WCC 16.16.260 – General Mitigation Requirements***

The Habitat Management Plan (HMP) meets mitigation sequencing requirements. Prior to final plat approval: the applicant will submit and receive approval of a

standard surety, install fencing, signage, and mitigation plantings, receive as-built approval, and record with the Whatcom County Auditor easement documents. As conditioned, the proposed subdivision will provided mitigation sufficient to address adverse environmental impacts to achieve no net loss of ecological functions and values.

### **Avoidance**

The applicant is placing in a reserve tract designated as open space approximately 98 acres or 78% of the Governors Point watershed containing high functioning, terrestrial forest, and the upper bounds of the marine riparian area. The 126 acre peninsula is eligible for 25 residential lots per the five acre zoning designation. As proposed only 16 residential lots will be created with this development and 9 development densities will permanently be removed. No direct impacts to wetlands are proposed.

### **Minimization**

Minimization of impacts includes site design, development limitations, and protective easements. As provided in the HMP unavoidable impacts have been reduced to a level of no adverse impact or compensatory mitigation. Development has been limited to less than 10% of the plat; the plat is nearly the entire Governor Point watershed. Residential lot development, on average, is limited to less than 20% including all impervious surfaces and ornamental landscaping. Residential development is clustered on the Samish Bay side of the peninsula.

As the project is proposed altering of natural drainage patterns, natural topography and hydrology will be minimized by re-surfacing existing roads (new roads will not be constructed) and future development is conditioned to meet site development criteria in the shoreline management plan in affect at the time of development. Stormwater management from impervious surfaces such as roads, buildings, and structures, driveways, and other impermeable surfaces will be treated and infiltrated or dispersed on-site via road and driveway side swales, infiltration trenches or other facilities. All stormwater must utilize existing outfalls.

As conditioned, stormwater easements for each residential lot will be required and sleeves to accept stormwater conveyance will be installed in the existing road to allow stormwater to be pumped and fully dispersed into the terrestrial forest of Tract A, should on-site infiltration or dispersion be determined infeasible. New outfalls not associated with residential dispersion or infiltration are prohibited.

## **Rectification**

All areas, outside of the approved development footprint, impacted during construction are required to be rectified by removal of construction materials, temporary staged fill, and revegetated with native plantings.

## **Reduction**

For the proposed subdivision, critical area protection measures include a conservation easement containing the critical area and their buffers shall be recorded at the time of future development on each lot. As a condition of approval a conservation area easement for all streams, wetlands, and buffers within the proposed subdivision is required to be recorded with the Whatcom County Auditor's Office and the Auditor's File Number (AFN) will be recorded on the face of the plat. Split rail fencing and signs are required ten feet from herbaceous balds and at the edge of stream and wetland buffers. Maintenance of these protective measures is included in the Covenants, Conditions and Restrictions (CC&Rs). The CC&Rs also include the requirement for native vegetation retention.

## **Compensation**

Mitigation measures include replanting of vegetation removed to complete plat development. In addition, future developments will provide compensation mitigation in accordance with Whatcom County Codes in affect at the time of development. The applicant provided a conceptual mitigation plan for impacts to wetland D during road construction activities. A surety and five years of monitoring of compensatory mitigation will be required.

### ***WCC 16.16.261 – Alternative or Innovate Mitigation Plans***

The applicant applied for a Development Agreement associated with the subdivision proposal. The requested amendments pertinent to the WCC 16.16 include a reduction of standards marine shoreline setback from 150 feet to 70 feet for lots 1-7 and 75 feet for lots 8-16 and an allowance of 500 square feet of development within the reduced setback.

The HMP has been found to be consistent with WCC 16.16.260 General Mitigation Requirements, WCC 16.16.680 Wetland Mitigation, WCC 16.16.760 Mitigation Standards for Habitat Conservation Areas, and Whatcom County Title 23 Shoreline Master Program. The Habitat Management Plan has been determined to meet no net loss of ecological function and ecosystem wide process.

The HMP has been determined to comply with WCC 16.16.261(B)(1)-(7).

**WCC 16.16.610 – Wetlands Designation, Rating and Mapping**

The following wetlands have been verified as present within the impact area. Their location and size can be seen on the submitted site plans, and can be geographically located on Figure 2 of the Revised Wetland and Habitat Assessment Report. All wetlands identified are located outside of Shoreline Jurisdiction and assessed under the 2017 Critical areas ordinance (ORD2017-077).

Wetland	Size in study area (square feet)	Category	Habitat Score	Moderate Intensity Buffer size (ft.)	HGM
A	5615	IV	6	40'	Slope
B	374	IV	6	40'	Slope
C	0.62	IV	5	40'	Slope
D	0.09	III	7	100'	Slope-Depressional

**WCC 16.16.630 – Wetland buffer widths**

Standard Buffer widths were assigned to each of the four wetlands found in the development area according to WCC 16.16.630(D). No reduction or averaging of wetlands buffers were proposed. Wetland D buffer will be increased by 1500 square feet as recommend in the HMP.

**WCC 16.16.680 – Wetland Mitigation**

No direct impacts to wetlands are proposed. The proposed road improvements on tract A and Tract B at southern end of the property will result in 420 SF of permanent impacts and 880 SF of potential temporary impacts to the outer edge of the buffer to Wetland D. The impacts are unavoidable road improvements are required to bring the main access road up to standards. Impacts have been minimized by using block-retaining structures on the downhill side.

As conditioned, the recommendations in the habitat management plan are required. A final mitigation plan will be submitted prior to civil drawing approval. This final mitigation plan will include the recommendation to provide an additional 1,500 SF of buffer to the west side of Wetland D. In addition, 880 SF of buffer restoration will occur in the areas temporarily impacted through a combination of replanting/transplanting with local native understory species and healing-in exposed soils with wood chip mulch

**WCC 16.16.690- Compensatory Mitigation Plan**

Prior to civil drawing approval, the applicant will submit a final wetland mitigation plan with the elements of WCC 16.16.690 and 16.16.260 and receive approval. Then plan shall also include locations of required signage and fencing. The final

mitigation plan will include one of the following a bond quantity worksheet or bid from a licensed contractor. A landscape section is required to be included in the civil drawing plan set to address buffer replanting (location and a planting schedule) and the locations of fencing and signage. As conditioned, the application will provided mitigation sufficient to address adverse environmental impacts to achieve no net loss of ecological functions and ecosystem-wide process.

**WCC 16.16.710 – Designation, Mapping and Classification- Habitat Conservation Areas**

The CAAR Doc 1 through 5 and Attachment A titled, “Habitat Conservation Area Descriptions and Mitigation Summary Table for Governors Point Long Plat” identify several types of Habitat Conservation Areas (HCA) have been documented on Governor’s Point or adjacent to development within Marine Waters.

The following HCAs are known to be present within the project area:

- Streams
- Herbaceous Balds
- Biodiversity Areas and Habitats
- Mature Forests
- Puget Sound Nearshore
- Chuckanut Wildlife Corridor\*
- Marine Nearshore Habitat and Marine Riparian Zone\*
- Critical Saltwater Habitat
- Snags and Logs
- Riparian Habitat
- Roosting Habitat for Big Brown Bat, Myotis bats, Pallid bat

\* Habitat of Local Importance

The Cantrell Wetland Delineation and Habitat Assessment Report describe Stream A within the project area as non-fish bearing, Type 5 stream. However, staff observed fish within the stream during site inspection on March 19, 2019. As a result, a condition of approval staff determined Stream A to be fish bearing.

Stream	HCA Designation	Critical Area Buffer (ft.)
Stream A	Fish Bearing	100

Designating Stream A as fish bearing does not have an effect on the project design, as the 100 foot buffer is outside of any proposed development area.

**WCC 16.16.760 – Mitigation Standards for Habitat Conservation Areas**

The description, impact determination, and associated mitigation conditions are summarized in the table within Attachment A titled, “Habitat Conservation Area Descriptions and Mitigation Summary Table for Governors Point Long Plat”. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with locations of required signage and fencing. A landscape section is required to be included in the civil drawing plan set to address fencing and signage locations.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.*

**E. Zoning (Title 20)**

**Residential Rural (RR5A) District (WCC Chapter 20.32)**

The project site is zoned Residential Rural (RR5A) district. WCC Chapter 20.32 outlines the land use controls for development within the R5A zone.

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.32.253, establishes the basic density and lot size requirements for residential development in the R5A zone. The requirement for the RR5A zoning district for subdivisions is listed below:

District	Gross Density	Minimum Lot Size – Conventional	Minimum Lot Size – Cluster	Minimum Reserve Area (Cluster Divisions)
RR-5A	1 dwelling unit/5 acres	5 acres	15,000	30%

*The site is approximately 128 acres with a density of one unit per five acres. The applicant is proposing sixteen clustered residential lots and one buildable reserve tract. The proposal is consistent with the maximum density requirements of WCC 20.32.253.*

*The proposed cluster lots will be between 0.91 acres and 2 acres in size which meets the minimum cluster lot size requirements. The reserve tract and reserve area will be approximately 98 acres which is greater than the 30% minimum reserve area required by WCC 20.32.253. The proposed reserve meets the requirements of WCC 20.32.253.*

*The following details the parent parcel and development acreages:*

*Parent Parcel: 128 acres  
 Reserve Area Easement: at least 38.4 acres  
 Clustered Lots: 23.7 acres*

WCC Section 20.32.254 outlines the width at street line, width at building line and minimum mean depth requirements for cluster lots within the R5A district.

District	Width at Street Line – Conventional	Width at Street Line – Cluster	Width at Bldg. Line	Minimum Mean Depth
RR-5A w/public water and stormwater facilities	30'	30'	70'	80'

*The proposed development meets the requirements for width at street line and building line and minimum mean depth.*

**WCC 20.32.130 Accessory apartments of detached accessory dwelling units**

The applicant has indicated accessory apartments or detached accessory dwelling units will not be allowed. Pursuant to WCC 20.32.13(7) no lots will be marked as eligible on the face of the plan.

*ADU's have not been requested and will not be allowed on lots created through the Governors Point Long Subdivision.*

**WCC 20.32.300 Lot clustering, reserve area and reserve tract.**

**WCC 20.36.305 Lot clustering. (Adopted by reference in WCCP Chapter 2.)**

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost and increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

*The proposed division is a cluster subdivision pursuant to WCC 20.32.300. At least 30% of the site will be preserved in the reserve area easement and used for preservation of vegetated corridors for wildlife habitat and preservation of potential trail and recreation areas.*

**WCC 20.32.310 Design standards. (Adopted by reference in WCCP Chapter 2.)**

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

- (1) Clustered building lots may be only created through the subdivision or short subdivision process.
- (2) Building lots shall be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.
- (3) The majority of building sites shall be arranged in a cluster or concentrated pattern to be compatible with physical site features and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- (4) Common access to clustered building lots shall be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the "reserve tract" for the purpose of future approved development in urban growth areas and urban growth area reserves.

*The applicant is creating the lots through the long subdivision process, the design of the proposal protects the natural resources on the site and the proposal will not include more than one access to the county road system for the new development. The clustered lots are arranged to protect upland habitat areas and leave a large continuous forested area. The reserve tract is accessible by the proposed internal access road and there are seven cluster lots proposed.*

**WCC 20.36.315 Reserve area.**

- (1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC [20.97.344](#) that is protected "in perpetuity so long as it is not within an urban growth area." The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC [20.32.253](#). This is standard code language for protection of the Reserve Area for all cluster subdivisions.
- (2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for on-site agricultural uses permitted in WCC [20.32.052](#). Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC [20.32.253](#).

*The proposal will be conditioned to include a reserve area easement that is protected consistent with WCC 20.32.315(1). The reserve area will potentially include OSS drainfields and a portion of the access road. The area the access road occupies will not be included in the reserve area percentages per WCC 20.32.315(2).*

**WCC 20.32.320 Reserve tract. (Adopted by reference in WCCP Chapter 2.)**

For the purposes of this section, "reserve tract" is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural,

forestry, or open space purposes. All "reserve tracts" created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this section, the "reserve tract" may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The "reserve tract" may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a "reserve area" easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The "reserve tract" may be further subdivided only through the long subdivision process and only under one of the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC [20.36.305](#)(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "reserve tracts." Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC [20.32.253](#).

(5) The requirements of subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

*The Reserve Tract will be designed for open space purposes. No homesite will be designated on the Reserve Tract as the applicant has not proposed a single family*

*residence on the tract. The applicant has proposed transferring ownership of the Reserve Tract to the WLT to be used for active and passive recreation. Development of the Reserve Tract, other than plat infrastructure, will be permitted and completed by the WLT.*

*After subdivision there will be nine remaining densities. Through the development agreement the applicant will extinguish those development rights. The subdivision will be conditioned to include notes that shall be placed on the face of the mylar to be consistent with WCC 32.320.*

**WCC 20.32.350 Building setbacks.**

Building setbacks shall be administered pursuant to WCC [20.80.200](#) (Setback Requirements).

Front Yard	Side Yard	Rear Yard
25 ft.	5 ft.	5 ft.

*Setbacks will be addressed during the review of future building permit applications. As proposed, all lots have adequate area to meet the County setback requirement. In some circumstances, the front yard setback may be reduced during the future review of building permit applications to 20 feet, pursuant to WCC 20.80.230.*

**WCC 20.32.400 Height limitations.**

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC [20.80.675](#).

*No structures will be greater than 35 feet in height, except as further restricted by the SMP.*

**WCC 20.32.450 Lot coverage. (Adopted by reference in WCCP Chapter 2.)**

No structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total area, not to exceed 25,000 square feet. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

*Lot coverage will be reviewed at the time of building permit submittal. Lot coverage will be further modified by the requirements of the development agreement.*

**WCC 20.32.654 Parking requirements.**

Parking shall conform to the requirements of WCC [20.80.500](#). However, recreation vehicles, and boat parking and storage shall be limited to side and rear yards.

*Parking will be reviewed at the time of building permit; however, each lot shall contain at least two onsite parking spaces. Parking shall meet the standards of WCC 20.80.500 and shall be at least 10 feet in width and 20 feet in depth (WCC 20.80.510).*

***WCC 20.32.656 Drainage. (Adopted by reference in WCCP Chapter 2.)***

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

*Stormwater management has been addressed through conditions of approval from Public Works Engineering Services.*

***WCC Chapter 20.78 Transportation Concurrency***

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Whatcom County Public Works Department Engineering Services issued a Preliminary Concurrency Determination. A Certificate of Transportation Capacity will be issued prior to final plat approval.

*The Technical Review Committee has determined the project is consistent with the requirements of WCC Chapter 20.78.*

***WCC Section 20.80.212 Concurrency***

WCC Section 20.80.212 states that no subdivision shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

**Water**

Water will be provided for to the site from the City of Bellingham. For more analysis regarding water see Section VII.I. Section I Health Department of this report.

**Sewage Disposal**

Sewage disposal will be provided by onsite septic systems. For more analysis regarding sewage disposal see Section VII.I of this report.

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a

proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

In addition, RCW 58.17.110 (2) requires that a proposed subdivision shall not be approved unless the city, town or county legislative body makes written findings that:

Appropriate provisions are made for the public health, safety, and general welfare and.... schools and school grounds and all other relevant facts.

### **Schools**

The applicant submitted a will-serve letter for this proposal October 5, 2020 from the Bellingham Public Schools. The school district received notice of the proposal and made no further comments.

### **Fire Protection**

The proposal is within the service area for the South Whatcom Fire Authority. The district submitted a will-serve letter on October 15, 2020.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.*

## **F. Subdivision Regulations (Title 21)**

WCC Chapter 21.05 regulates policies and procedures for approval of a long subdivision. Section 21.05.030(h)(i and ii) require:

Approval of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions that:

- i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such subdivision and dedication; and
  1. With Regard to the public health, safety and general welfare, the Technical Committee submits the following findings:

*The Technical Review Committee finds that, as conditioned the development has made adequate provisions for public health, safety, and general welfare.*

2. With regard to open space, parks and playgrounds the Technical Review Committee finds the following:

The proposed lots are located in the Residential Rural zoning district and meet the minimum cluster lot size requirements. At least 75 percent of the site will be set aside for open space and passive and active recreation. The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.

3. With regard to streets or roads, alleys, other public ways and transit stops, the Technical Review Committee finds the following:

*Proposed access to the subdivision will be a private road off Pleasant Bay Road. The Technical Review Committee finds that the development will be adequately served by roads, subject to implementation of the conditions proposed by the Division of Engineering.*

4. With regard to drainage Technical Review Committee finds the following:

*The Technical Review Committee has determined that the proposal, as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.*

5. With regard to schools the Technical Review Committee finds the following:

*Bellingham Public Schools was included in the Notice of Application and did not submit comments. This application will be conditioned to provide a letter of concurrency prior to final plat approval; therefore, the Technical Review Committee has determined that as conditioned, the proposal is providing adequately for schools.*

6. With regard to compliance with the relevant polices of the Whatcom County Comprehensive Plan the Technical Review Committee finds the following:

*Applicable goals and policies of the comprehensive plan are as follows:*

Goal 2H: Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural

development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

Policy 2GG-6: Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services.

*The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan.*

- ii. The proposal is in conformity with the Whatcom County Comprehensive Plan, applicable land division, zoning, critical areas, shoreline management, other land use regulations and Chapter 58.17 RCW.

*As analyzed previously in this report, the Technical Review Committee finds that, as conditioned, the project is in compliance with Title 20 and Title 21 and all other land use controls.*

*The Technical Committee has determined that, as conditioned and amended, the project meets the requirements of WCC Title 21.*

***WCC 21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.***

(1) Except as provided by subsection (1)(a) of this section, a final plat shall be submitted to the subdivision administrator in proper form for final plat approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(a) A final plat shall be submitted in proper form for final plat approval within 10 years of the date of preliminary plat approval if this project is not subject to requirements adopted under Chapter [90.58](#) RCW and the date of preliminary plat approval is on or before December 31, 2007.

*The applicant has not requested a phased subdivision. As conditioned, the applicant shall complete infrastructure requirements and record the final subdivision within five years of the date of preliminary approval.*

***WCC 21.05.040 Development requirements.***

(1) All subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider prior to final subdivision approval, unless security is provided under WCC [21.06.040](#).

(3) Improvements and other requirements shall be provided to the extent that each phased subdivision will be adequately served by all roads, utilities, drainage facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed, except on-site septic systems do not have to be installed unless required by the health officer. (Ord. 2009-007 § 1).

*As conditioned, the proposed subdivision is consistent with the applicable standards, requirements and procedures of the Whatcom County Development Standards. All improvements shall be completed prior to final subdivision approval except as agreed to under WCC 21.06.040.*

**WCC 21.05.050 Roads.**

Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, shall take place whenever a subdivision abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

*No dedication is required for this development.*

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the final plat, unless security is provided under WCC [21.06.040](#).

*No frontage improvements are required for this development.*

(3) Minor and local access roads should discourage through traffic.

*No through traffic is proposed for the proposed development.*

(4) All subdivisions and phased subdivisions shall abut and be accessed by a constructed and maintained public road or a private road as allowed under the Whatcom County Development Standards. The number of access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer in order to analyze present and future traffic circulation patterns to determine the appropriate location and number of access points to the site and to ascertain the appropriate classification and character of the proposed roads.

*The subdivision is accessed by a constructed and maintained private road as allowed by the Whatcom County Engineer. There is one access point to the site for this development and the development is not proposed to be phased.*

(5) Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the subdivision.

*A secondary access point or additional road right-of-way is not necessary for the development.*

(6) Public road rights-of-way and/or easements shall be extended to the boundaries of subdivisions that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.

*The development is proposing a private road. No rights-of-way or easements will be required at this time.*

(7) Private roads may be permitted in a subdivision when in compliance with the Whatcom County Development Standards. (Ord. 2009-007 § 1).

*The applicant has requested private roads for the development. As discussed in Section VII. A, the Whatcom County Engineer has reviewed and approved the request.*

**WCC 21.05.080 Water supply.**

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

*Public water is proposed to be provided by the City of Bellingham.*

**WCC 21.05.090 Sewage disposal.**

(2) Outside of the urban growth area and small town Comprehensive Plan designations, subdivisions shall not be approved that require extension or expansion of public sewer except when:

- (a) Public sewer is necessary to protect the public health, safety or environment; and
- (b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC [24.05.210](#), Developments, subdivisions, and minimum land area requirements.

*The proposed subdivision is not located within the urban growth area or the small town comprehensive plan designations. Public sewer is not proposed. As discussed in Section VIII. H the OSS shall meet the requirements of WCC 24.05.210.*

**WCC 21.05.100 Fire protection.**

Long subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal. (Ord. 2009-007 § 1).

*As conditioned by the Whatcom County Fire Marshal, this proposal is consistent with WCC 21.05.100.*

**G. Shoreline Management Program (Title 23)**

The Shoreline Administrator has reviewed this long plat proposal (LSS2018-00003) for consistency with the Shoreline Management Program (SMP) and has determined that, with the recommended conditions of approval, it is consistent with all applicable policies and regulations of Title 23 WCC.

Pursuant to WCC 23.60.010, a shoreline substantial development permit is required for all proposed use and development of shorelines, unless specifically exempt pursuant to WCC 23.60.022. The proposed division of land, including long plats, does not constitute "development" on its own and therefore does not require authorization under a shoreline substantial development permit. However, pursuant to WCC 23.100.110, "development" may include developments associated with subdivision, such as proposed roadways or other infrastructure. The subject long plat proposal includes such associated developments and the applicant has applied for a shoreline substantial development permit as well as a shoreline conditional use permit to authorize the following associated development activities within shoreline jurisdiction:

1. A portion of the proposed road network to serve new lots is within shoreline jurisdiction (on Tract A, and Lots 10 & 12); and
2. A proposed community boating facility (tender dock) on Tract B; and
3. An access trail and community storage/restroom building on Tract B; and
4. A proposed 800 SF storage/restroom building on Tract B

Staff analysis and findings for the associated shoreline substantial development permit and shoreline conditional use permit are provided in Attachment B to this report.

**WCC 23.90.080 Public access**

Public access is required for all subdivisions of more than four (4) residential lots or dwelling units unless the applicant adequately demonstrates that it is infeasible,

consistent with the policies and regulations of this section. The proposal includes conveyance of approximately 98 acres of land to be put into public trust in order to preserve public access to Governors Point.

When provisions for public access are required as a condition of project approval, the administrator shall prepare written findings, pursuant to Chapter 23.60 WCC, demonstrating consistency with the principles of nexus and proportionality and the test stated in subsection (A)(2) of this section and WCC 23.50.080(A). Staff finds that the test provided in WCC 23.90.080(A)(2) requires that public access be provided for the subject long plat proposal, as it does not meet any of the provisions to be exempt from the public access requirement. As part of an agreement with the City of Bellingham and the Whatcom Land Trust, the applicant agrees to convey approximately 98 acres of land (Tract A) to be put into public trust. Additionally, the plat includes two additional 1-acre tracts (Tract B & C) that will provide public access to the shoreline.

Pursuant to WCC 23.50.080, decisions on shoreline permits or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings shall assure that the conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact. For the long plat proposal the applicant has volunteered to exceed any reasonable minimum requirement for public access and has elected to provide approximately 78% of the land area for purposes of public access. Staff finds that this proposal meets and exceeds the minimum requirements of this section for public access requirements. No additional condition for public access, beyond the applicant's proposal, is required.

### ***WCC 23.90.090 Site planning***

This section requires that new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes. Staff finds that, in addition to proposing fewer lots than what might be allowed by maximum density standards of the Zoning Ordinance and SMP, the proposed subdivision will also provide a clustered lot configuration.

This section also requires that vehicle and pedestrian circulation systems be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Staff finds that the proposal is consistent with the circulation system minimization requirements, in consideration to the natural topography and standards for safe access for emergency responder vehicles.

Other requirements of this section that are applicable to subdivision approval have been incorporated as recommended conditions of approval.

### **WCC 23.100.110 Residential**

For subdivisions where lots are to be created within shoreline jurisdiction, the following requirements shall be met:

- i. Land division may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.*
- ii. New land division shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. New land division that would require shoreline stabilization is prohibited.*
- iii. New or expanded subdivisions and all multiunit residential developments shall provide a community recreation and/or open space area for the benefit of all residents or property owners in the development; provided, that such provisions shall not apply to lot line adjustment, lot consolidation, and subdivision of land into four or fewer lots.*
- iv. New or amended subdivisions, except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in WCC 23.90.080 and this section.*
- v. All new subdivisions shall record a prohibition on new private docks on the face of the plat. An area for shared moorage may be approved if it meets all requirements for shared moorage in WCC 23.100.090, including demonstration that public and private marinas and other boating facilities are not sufficient to meet the moorage needs of the subdivision.*
- vi. Subdividing tidelands for sale or lease in connection with individual building lots is prohibited.*
- vii. Substandard shoreline lots unsuitable for development of a primary permitted use under the Official Zoning Ordinance (WCC Title 20) and this program shall not be subdivided.*

Staff finds that, with the recommended conditions of approval, the proposed long plat meets all requirements listed above.

### **H. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department (WCHD) has reviewed the proposed project

noted above in accordance with WCC 24.05 *On Site Sewage System Regulations*, WCC 24.11 *Drinking Water Code*, and WCC 21 *Land Division Regulations*. The WCHD submitted a memo dated September 9, 2020 stating the following:

The Whatcom County Health Department (WCHD) has reviewed the proposed project referenced above in accordance with WCC Title 24 Health Code and Title 21 Land Division Regulations.

WCHD recommends preliminary approval with the following conditions:

### ***Sewage Disposal***

The applicant has provided an on-site sewage system (OSS) subdivision application demonstrating adequate soils approved by WCHD. The proposed OSS are at least 100 ft. from OHWM per Whatcom County Code 24.05.100. The applicant has proposed to either develop the OSS on each individual lot or on Tract A with required easements.

### ***Water Supply***

The applicant has provided documentation that the City of Bellingham will provide wholesale water for the project.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.*

## **I. Development Agreement (WCC 2.11.200 Hearing Examiner – Duties and Powers)**

### ***WCC 2.11.200 Hearing examiner – Duties and powers.***

### ***WCC 2.11.205 Recommended decisions.***

In accordance with the provisions of Chapter [22.05](#) WCC, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

C. Development agreements, as authorized in Chapter [36.70B](#) RCW;

Chapter 36.70B.170 Revised Code of Washington

1. A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that

shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter [36.70A](#) RCW.

*The applicant and Whatcom County are entering into a development agreement for real property within the County. This development agreement will include alternative standards that will govern and vest the agreement upon standards for the duration of the subdivision. The subdivision will be consistent with all applicable development regulations.*

2. RCW [36.70B.170](#) through [36.70B.190](#) and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

*This section is not applicable to this agreement.*

3. For the purposes of this section, "development standards" includes, but is not limited to:
  - a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
  - b. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
  - c. Mitigation measures, development conditions, and other requirements under chapter [43.21C](#) RCW
  - d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
  - e. Affordable housing;
  - f. Parks and open space preservation;
  - g. Phasing;
  - h. Review procedures and standards for implementing decisions;
  - i. A build-out or vesting period for applicable standards; and
  - j. Any other appropriate development requirement or procedure.

*The applicant is proposing to deviate from existing development standards for the following items:*

- *Shoreline setback for lots 1-7 has been modified to 70 feet. Shoreline setback for lots 8-16 has been modified to 75 feet, and*
- *Allowance of up to 500 square feet of development in the shoreline setback.*

*As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement (Attachment A) process to mitigate potential impacts:*

- *No more than 10% of the 128 acre parcel will be developed or included within the “developable area.”*
  - *The residential lots will be limited to on average 20% development area.*
    - *The developable area (“Developable Area”) shall mean the area in which all development on the Property may be located including buildings, ornamental landscaping, and structures such as roads, driveways, courtyards, covered walkways, outdoor shelters, carports or similar open sided structures with water tight roof, and those items specified in Section 2.1.7.3. The term “ornamental landscaping” shall include non-native landscaping, lawns and gardens. Notwithstanding the total Developable Area allowed for any given Residential Lot, ornamental landscaping shall not exceed 3,000 square feet in total on any Residential Lot. For Tracts B and C, “Developable Area” includes viewing platforms, restrooms, and storage sheds.*
  - *Single family residences will be limited to 2,900 square feet of “conditioned living space”*
    - *“Conditioned Living Space” shall include interior space within an enclosed structure intended for human habitation.*
  - *Individual development on each lot shall not exceed 4,000 square feet total floor area*
    - *Included in this limitation are “Conditioned Living Space”, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings.*
  - *Creation of a 98 acre open space tract as a limited access nature preserve.*
  - *Reduction in number of lots created from 25 lots (allowed by zoning code) to 16.*
  - *The applicant has 20 years to develop each lot in accordance with the Development Agreement. After the agreement expires both the developable area (as defined by section 2.1.5 of the agreement) and shore setbacks are perpetual.*
4. The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

*The applicant is proposing to deviate from development standards through the development agreement process for several items.*

*The applicant has proposed to mitigate potential impacts from reduced shoreline*

*setbacks by utilizing a watershed approach to identify and protect habitat. To meet the required goal of no net loss, a series of habitat management strategies were developed in the approved habitat management plan. When summed together this approach preserves watershed functions, forest ecological functions, and nearshore functions.*

*To mitigate for the reduced shoreline setback the applicant has provided a habitat management plan. The plan includes increased water quality standards, retaining native vegetation outside of the reduce setback, limiting developed to less than 10% across the entire watershed and on average limiting the residential lots maximum developed area to 20%.*

*The 20% developed area includes interior space for human habitation to 2900 sq. ft. of floor area. Other accessory structures are limit to a maximum of 4,000 sq. ft. of floor area as measured by interior space, which includes the 2900 sq. ft. of conditioned space. Ornamental landscape is required to be below 3,000 square feet or less than 10% of the lot area. The ornamental landscape area is included in the maximum 20% developed area.*

*The limited development area also helps to maintain wildlife corridors. To ensure protection of the wildlife corridor, at the time of future development, a conservation easement will be required per individual lot. The conservation easement shall be the remaining area outside of the approved development. Tree retention requirements*

*The applicant has also prohibited shared moorage throughout the plat, except for lot 16 and Tract B; individual docks are prohibited by the Whatcom County SMP. All other overwater structures are prohibited.*

*The applicant is treating stormwater run-off on each lot to a greater extent than required by the Western Washington Stormwater Manual through additional best management practices. Full dispersion will not need pretreatment, all other stormwater management methods will require pretreatment through a media filter to remove excess nutrients and other pollutants from the stormwater prior to discharging. The plat prohibits direct discharge to the nearshore habitat. If stormwater cannot be treated on-site to the appropriate level per the habitat management plan, sleeves have been require to be installed in the road to except stormwater conveyance carrying stormwater pumped into the riparian forest of Tract A for full dispersion.*

*This approach uses a watershed scale analysis as a proxy to demonstrate no adverse impact to hydrology and habitat at the landscape ecology scale. Further by limiting the forest canopy removal to 20% on the individual lot we manage other forest ecosystem functions or provide a solution to mimic natural processes. This provides a sustainable approach to maintaining Riparian (Freshwater and Marine) Functions; this approach is similar to the WDFW model provided in the draft Riparian Ecosystems, Volume 2: Management Recommendations. The result is a functional ecosystem in*

*the upland coupled with the reduction in allowed overwater structures translates into no adverse impacts the nearshore habitat and species.*

*The applicant has demonstrated that, as conditioned, the proposed development will protect critical habitat and functions.*

#### **IV. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and Washington State regulations.

As stated above the Technical Review Committee recommends approval of the Long Subdivision and development agreement applications, subject to the following conditions:

#### **X. CONDITIONS OF APPROVAL**

##### **Current Planning Division**

1. The use and location on the site as shown on the site plans dated September 2020 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the final plat is submitted in proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The applicant shall obtain all necessary federal, state and local permits prior to construction.
7. The final plat shall include a note referring to the signed and recorded Development Agreement.

8. An easement on the subdivision plat shall be placed over the reserve area per the definition in WCC [20.97.344](#). The reserve area shall be designated as open space and protected in perpetuity. The minimum percentage of the parent parcel required to be within a reserve area is 30 percent (WCC 20.32.253).
9. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

### **State Environmental Policy Act**

10. As recommended in the Archaeological Assessment for the Governor's Point Residential Development, Bellingham, Whatcom County Washington (Report 0519C) by Drayton Archaeology, dated June 3, 2019; archaeological monitoring done by a qualified professional shall occur during construction of the trail and dock on the Reserve Tract near 45WH501.
11. Work may proceed on proposed reserve tract but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO shall review and comment, if necessary, on the Monitoring and Inadvertent Discovery Plan (MIDP) before the construction begins.
12. Work may proceed on proposed lots 1-16 with the Washington State Department of Archaeological and Historic Preservation's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation shall be included in the IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

### **Public Works Engineering Services**

13. The applicant shall comply with the conditions of the Whatcom County Public Works Engineering Services in the memo dated October 29, 2020, unless modified by that Department or appealed to the appropriate agency.
14. All development shall comply with the Whatcom County Development Standards (WCDS).
15. Sight distance at all road intersections shall meet WCDS.

16. Roads within this development are to be private as permitted under Section 505.E. of Chapter 5, Road Standards.
17. A private road maintenance agreement shall be included in the CC&R's for the subdivision.
18. County-approved road names are required to be shown on the final plat.
19. A map at 1"=400' scale of the lots shall be provided to PWES for address assignment. Addresses shall be shown on the final plat. The plat address fee shall be paid prior to recording.
20. Interior private roads shall be passable at all times for emergency and public service vehicle use.
21. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering review and approval prior to construction.
22. The proposed residential private roads shall be constructed as follows:
  - a. paved apron per WCDS drawing 505.E-4
  - b. 40-foot minimum access easement width
  - c. a total of twenty foot minimum roadway inclusive of shoulders, with
    - i. nine foot minimum width paved drive lanes,
    - ii. one foot minimum width crushed surfacing shoulders, or
    - iii. where terrain constraints exist, road section may include rock wall or retaining wall with concrete vertical curb and gutter at face of wall
  - d. 2% max cross slope
  - e. 2-1/2" minimum compacted depth HMA
  - f. 2" minimum compacted depth crushed surfacing top course
  - g. 10" minimum compacted depth aggregate for gravel base or 8" of additional crushed surfacing base course
  - h. turnarounds at road ends as shown on the preliminary plans and according to WCDS drawing 505.L-2
23. Horizontal and vertical curve information shall be provided on the civil plans. Alignments shall meet minimum horizontal curve radii per WCDS, as approved in the preliminary plans. The residential portion of Road B has been approved, through variance, for reduced speed and hence reduced minimum radii, to be mitigated with widened roadway at minimum curves.
24. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way prior to commencing said work.

25. All signing and striping shall be installed as per the Manual of Uniform Traffic Control Devices (MUTCD) standards at the developer's expense.
26. The utility access road serving the boat dock shall be a minimum of twelve feet wide.
27. From the intersection of Roads A and B, for a minimum of 100 feet in each direction from the center of intersection, roads shall be constructed with a minimum of 18 foot paved driving surface plus four foot shoulders for a total width of 26 feet.
28. Road B shall be posted for the requested reduced 20mph speed limit. Signs shall be included in the civil plans.
29. Applicant shall provide certified evaluation of the need for traffic barrier by a professional engineer for the proposed private roads. Evaluation shall include the need for a guardrail or barrier at the top of proposed roadside walls. Evaluation shall include site plans noting areas where the recovery zone is less than ten feet, areas where the downhill slope is greater than 2:1, and areas with greater than 10 foot vertical drop below.
30. A final engineered stormwater design report that meets requirements of the current County-adopted Department of Ecology Stormwater Management Manual for Western Washington shall be submitted and approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington. This development shall comply with minimum requirements 1 through 9.
31. The stormwater design report shall account for the total allocated hard surface value, to include the sum of hard surface values for roads, apron, and the hard surface values assigned to each lot.
32. The final engineered stormwater design report shall include SWM best management practices (BMPs) and design for the private roads, as well as a conceptual site plan for each lot. The lot-specific site plans shall demonstrate that each lot can accommodate driveway access and building site with stormwater BMPs that meet required setbacks and slopes per fire, septic separation, critical area and shoreline jurisdictions, and SWM requirements. Applicant shall provide geotechnical support for the design as needed, per SWM and PWES.
33. Private stormwater treatment facilities are to be located outside of the County right of way (ROW). If the engineer determines best location for facility is within the ROW, submit request for approval with County Maintenance and Operations, and provide private maintenance agreement and plan to the County.
34. Downstream conveyance features including ditches and culverts that accept runoff from the development shall be assessed for condition by the engineer and shall be replaced or improved to provide adequate conveyance and erosion protection as needed, per the SWM and County approval.

35. The Stormwater Maintenance Plan shall be included in the CC&R's for the subdivision. The CC&R's shall include a requirement for those lot designs that include a stormwater pump, an emergency stand-by generator is required to remain on site.
36. The developer shall obtain approval from the local U.S. Postal Service Office for the location, style and height of the mailboxes. Mailbox locations, if shared, shall be shown on the final construction plans.
37. Following County approval of the civil construction plans and prior to commencement of construction, the developer, contractor, and developer's construction engineer shall schedule and participate in a formal Preconstruction Conference with PWES staff.
38. Engineer to provide certified construction compliance assurance statement following completion of the work and prior to final inspection per Chapter 2, WCDS.
39. Certified record drawings for all new roads and stormwater systems shall be submitted to and approved by PWES upon completion of construction. Record drawings shall include the Record Drawing Certification statement from Chapter 5, WCDS.
40. The plat shall identify stormwater BMPs required for plat roads and lots. The plat shall identify allowable impervious area per lot and note conservation and dispersion areas.
41. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement (DCGE) for plat stormwater maintenance purposes. Document shall include an exhibit indicating stormwater features and their locations, define the stormwater features, and include a maintenance and operations manual. Reference to the recorded DCGE shall be made on the final plat.
42. The construction engineer shall submit a construction cost estimate of the subdivision stormwater drainage system features with certified statement to PWES upon completion of the work and prior to County approval of the finished work. The applicant shall post a stormwater warranty security for 10% of the cost estimate (\$5,000 minimum). The security shall be in effect for two years following final record drawings.
43. Revised signature blocks and notes shall be added to the final plat prior to approval.

#### **Fire Marshal's Office**

44. The applicant shall comply with all of the conditions of the Fire Marshal's memo dated September 22, 2020, unless modified by the Fire Marshal's Office or appealed

to the appropriate agency.

45. Access roads shall meet Whatcom County Public Works-Engineering Services requirements and Whatcom Fire Marshal's Office road standards for grade surface requirements, turnouts, and turnarounds.
46. Fire permit is required for installation of underground fire lines and hydrants.
47. Access roads to the residences and fire sprinkler systems shall be address at time of building permit submittals.
48. Access road to the boat dock shall be a minimum of 12 feet wide and meet grade surface requirements per Whatcom County Code Chapter 15.04.040

### **Geohazardous Areas**

49. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Geohazards in the memo dated November 4, 2020, unless modified by that Department or appealed to the appropriate agency.
50. Alteration of any plat element intended to ensure the ability to avoid regulated geologically hazardous areas shall be reviewed by the Technical Administrator of Article 3, and if deemed necessary, a qualified professional in accordance with WCC 16.16.320(E). Such elements include, but are not limited to the following: lot configuration, stormwater and septic utility easements and stormwater system design.
51. Supplemental geologic hazard review by the Technical Administrator of Article 3 shall be required prior to issuance of final plat approval.
52. The following note shall be included on the face of the plat:

#### **GEO-HAZARD AREAS NOTE:**

THIS LONG PLAT HAS BEEN REVIEWED IN ACCORDANCE WITH THE WHATCOM COUNTY CRITICAL AREAS ORDINANCE, TITLE 16, CHAPTER 16.16, ARTICLE 3, ADOPTED PURSUANT TO ORDINANCE 2017-077. REGULATED GEOLOGICALLY HAZARDOUS AREAS HAVE BEEN IDENTIFIED AT THE SUBJECT PARCELS (EROSION AND LANDSLIDE HAZARD AREAS). FUTURE DEVELOPMENT ON ALL LOTS WILL BE SUBJECT TO THE CRITICAL AREAS ORDINANCE IN EFFECT AT THE TIME OF APPLICATION FOR THAT DEVELOPMENT.

## Habitat Conservation Areas and Wetlands

53. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Natural Resources Division in the memo dated November 5, 2020 unless modified by that Department or appealed to the appropriate agency.
54. The maximum “Developed Area” proposed by the applicant for each lot and tract are shown in a table in the preliminary plat map. This table shall be moved to the Developers Agreement. The definition of “Developed Area” is in Section 2.1.5 of the Developer’s Agreement.
55. Prior to final plat all four documents combined as the Critical Area Assessment Report shall be amended to match these conditions and any amendments to the Developers Agreement approved by the County Council. The final documents shall contain a revision date.
56. No more than 10% of the 126-acre Property shall be developed or included in a “Developable Area” as defined by the approved Development Agreement. This condition shall be a required plat note with a reference to the auditor’s recording number.
57. No residential structure located on any Residential Lot on the Property shall exceed 2,900 square feet of conditioned living space (“Conditioned Living Space”). Conditioned Living Space shall include interior space within an enclosed structure intended for human habitation. This 2,900 square foot limitation on Conditioned Living Space shall not include garages or shops, nor shall it include covered exterior courtyards, covered walkways, gazebos, outdoor shelters, storage sheds, carports or similar open sided structures with water tight roof, or similar structures. This condition shall be a required plat note.
58. In total, the floor area of all buildings on a Residential Lot shall not exceed 4,000 square feet. Included in this limitation is the Conditioned Living Space, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings. This condition shall be a required plat note.
59. A maximum total of 500-square feet of footprint area of development will be allowed within the shore setback for each Residential Lot. This includes roof eaves, decks, patios, covered walkways, stairs, and accessory water-oriented structures without Conditioned Living Space.
60. The “Developable Area” on average shall not exceed 20% of the area of each individual lot. The average shall be determined at the time the Developer Agreement is approved and recorded.
61. For lots 1-7 and 8-16 remaining undeveloped areas, outside of the defined

"Developed Area" shown on the site plan at the time of building permit shall be protected from further development using protective measures in Whatcom County Code in effect at that time of development. This condition shall be a required plat note.

62. The side-yard setback for all Residential Lots and Tract B and Tract C shall be fifteen feet (15'). This condition shall be a required plat note.
63. The shore setback for Residential Lots 1-7 shall be seventy feet (70') measured from the Ordinary High-Water Mark (OHWM). The shore setback for Residential Lots 8-16 shall be seventy-five feet (75') measured from the OHWM. Ordinary High Water Mark shall be determined at the time of future development, in accordance with published guidance by the Department of Ecology. This condition shall be a required plat note.
64. A conservation easement shall be recorded for all wetlands and wetland buffers within the plat.
65. Development required before final plat and all future development shall apply all habitat management recommendations in document titled "Habitat Management Plan". Joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020; as amended by an addendum to the report dated October 27, 2020 and date stamped the same herein or as amended The AF# of the document shall be recorded on the deed. The following plat note is required:
66. "FUTURE DEVELOPMENT SHALL APPLY HABITAT MANAGEMENT MEASURES AS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF# ."
67. Future development shall be reviewed with the critical ordinance and shoreline master program in affect at the time of development, unless specifically amended by the Developers Agreement. The following plat note is required:
68. "LOTS 1-16 OF THIS LONG PLAT HAVE BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, CHAPTER 16.16 WHATCOM COUNTY CODE ADOPTED PURSUANT TO ORDINANCE 2017-0023 AS AMENDED. REGULATED CRITICAL AREAS ARE LOCATED WITHIN THIS LONG PLAT. A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR; AF FILE NO.\_\_\_\_\_. FOR WETLANDS AND ASSOCIATED BUFFERS. FUTURE DEVELOPMENT SHALL BE REVIEWED UNDER THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF# DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEMENT."
69. A mitigation plan may be required for future development permits as required by the critical area ordinance or shoreline master program in affect at the time development. The following plat note is required:

70. "FUTURE DEVELOPMENT SHALL REQUIRE MITIGATION FOR IMPACTS TO CRITICAL AREAS AND CRITICAL AREAS BUFFERS IN ACCORDANCE WITH THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF#        DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEEMENT."
71. Trails on Tract C shall not cover more than 3% of the total area of the tract. No residential buildings or overwater structures are allowed on Tract C.
72. A building setback is required from all standard or modified wetland buffers, standard shoreline setbacks, and herbaceous balds in affect at the time of future development. This condition shall be a required plat note.
73. No stairs shall be constructed to provide access to the shoreline, provided that pedestrian access trails using natural materials (native stone, etc.) with minimal alterations to existing grade and vegetation may be permitted. This condition shall be a required plat note.
74. Individual overwater structures, except mooring buoys are prohibited. This condition shall be a required plat note.
75. No docks of any kind, including shared docks, shall be allowed in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
76. Shared overwater structures are prohibited in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
77. Up to six residential mooring buoys are allowed to be installed in Pleasant Bay to serve residential lots in the plat, otherwise mooring buoys are prohibited. This condition shall be a required plat note.
78. On Tract B, the on-site septic system (OSS) shall be placed at outside of the standard shoreline setback and the wetland or wetland buffer. The OSS shall be not placed in the building setback if tree roots will be impacted.
79. For residential lots, septic drain fields shall be placed at least 112' landward of the OHWM of marine waters.
80. Tree retention and replanting requirements in the approved Habitat Management Plan shall be applied to all future development
81. For each snag or live tree removed with pileated woodpecker excavations, a snag will be created within the lots or within the adjacent Reserve Tract A
82. Clearing and Construction Associated with the maintenance yard on Tract A will not exceed 10,000 square feet in size.

83. Clearing and construction associated with the trails, restroom, and storage building shall not exceed 4,000 square feet.
84. Split rail fencing or similar exclusionary measures shall be required to be placed at the building setback along the road side off wetland A. Split rail fencing or similar inclusionary measures shall be required to be placed in order to prevent the public from entering wetland D, as determined to be applicable.,
85. Signage in accordance with WCC 16.16.265 shall be installed along herbeaceous balds, wetland buffers, stream buffers and the reduced shoreline buffer. The design of the signs shall be included in the final mitigation plan required prior to issuance of civil drawings.
86. Prior to civil drawing approval provide a final mitigation plan addressing the required recommendation in the approved Habitat Management Plan. The final mitigation shall show the increase of an additional 1,500 SF to the west side of Wetland D and provides 880 SF of buffer restoration to the areas temporarily impacted by a combination of replanting/transplanting with local native understory species and healing-in exposed soils with wood chip mulch.
87. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with locations of required wetland and habitat conservation area signage and fencing. A landscape section is required to be included in the civil drawing plan set to address fencing and signage locations
88. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with a bond quantity worksheet or bid from a licensed contractor. A landscape section is required to be included in the civil drawing plan set to address buffer replanting (location and a planting schedule).
89. Culvert or sleeve shall be installed under the road at each lot to allow for future development to install pressurized stormwater conveyance to be pumped in Tract A to allow for full dispersion and avoidance of impacts to slope stability. The locations of the culvert or sleeve shall be shown on the civil drawing. Inspection shall be required to verify installation prior to surfacing of the roadway.
90. Temporary fencing shall be installed along wetland D buffers prior to plat construction authorized under preliminary plat approval. Temporary fencing shall be shown on the civil plan sheet for TESC.
91. Prior to issuance of Civil Drawing approval Temporary Construction fencing shall be inspected and approved by Whatcom County Natural Resources.
92. Prior to construction associated with preliminary plat approval areas of disturbance shall be demarcated by the applicant and verified by Whatcom County Natural Resources. Any unavoidable impacts shall be address as an addendum to the final mitigation document and subject to surety and monitoring requirements.

93. Stormwater management is required for all residential lots in accordance with the Western Washington Stormwater Manual. In addition to the standards in the stormwater manual the following design amendments are required:
- a. Spreader discharges that will be carrying road run-off shall be kept at least 116' landward of the OHWM, where feasible.
  - b. Stormwater discharge from impervious surfaces with a flow path less than 116' shall be filtered through an engineered storm water treatment system with a 65% efficiency rate for phosphorus.
94. The following plat note shall be required:
- “FUTURE DEVELOPMENT SHALL BE REQUIRED TO MEET STORMWATER REQUIREMENTS IN THE CURRENT STORMWATER MANUAL APPROVED BY WHATCOM COUNTY IN ADDITION TO STORMWATER REQUIREMENTS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF# \_\_\_\_\_.”
95. The conceptual stormwater design for the plat and future development on residential lots has been approved without the need for additional outfalls. The final stormwater design shall not include new outfalls, which discharge directly or indirectly into the marine receiving waters. A downstream analysis determining the existing outfalls will not be receiving additional stormwater runoff shall be included in the final stormwater design narrative. A plat note restricting new outfalls will be required.
96. Future trail development within Tract B will require a separate land disturbance permit and will be subject to the Whatcom County Codes in affect at the time of the development. A comprehensive analysis for recreation development will be required from the applicant.
97. Prior to final plat approval the following is required:
- a. A conservation easement shall be recorded with the Whatcom County Auditor for all wetlands and wetland buffers within the plat.
  - b. Install split rail or other appropriate exclusionary measures along the building setback of herbaceous balds and required wetland buffer.
  - c. Educational signage and shoreline setback signage shall be installed. Educational signage regarding herbaceous balds shall be displayed on the fencing at each lot.
  - d. Wetland D shall be surveyed and its boundaries, along with the edges of its 100 foot buffer, shall be accurately shown on submitted checkprints.
  - e. Installation of mitigation as provided in the final mitigation plan. An as-built inspection for the approved mitigation will be required prior to final plat approval.

### **Shorelines – Long Subdivision**

98. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.
99. Design of structures shall conform to natural contours and minimize disturbance to soils and native vegetation to the extent feasible. Foundations shall be tiered with earth retention incorporated into the structure.
100. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
101. Any lighting along the proposed roadway/driveway corridors shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, or public areas to avoid infringing on the use and enjoyment of such areas, and to prevent hazards.

### **Shoreline – Shoreline Substantial and Conditional Use Permit**

102. The proposed shoreline developments shall be consistent with the scope detailed and approved by this substantial development permit and shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
103. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
104. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to commencing construction on the tender dock. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit.
105. In conformance with WCC 16.16.265, prior to issuance of the building permit, the applicant shall file a Notice on Title with the Auditor's Office. The notice shall be filed on forms provided by the County and a copy shall be provided to the shoreline administrator. This document is available online at:  
<http://whatcomcounty.us/DocumentCenter/Home/View/2205>.
106. Any change in the currently approved proposal shall receive further critical areas review and approval PRIOR to land disturbance.
107. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
108. Use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bedlands of marine shorelines

unless reviewed and approved by the Shoreline Administrator.

109. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
110. The gravel public access trail on Tract B shall be limited to 5' in width for all areas within the Habitat Conservation Area buffers. Additionally, trail improvements may be made waterward of the Ordinary High Water Mark.
111. Washington State Department of Ecology Water Quality Standards shall be maintained.
112. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
113. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment per 23.100.09.B.20.
114. Bulk storage or gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup.
115. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.
116. At the time of building permit submittal, a Temporary Erosion and Sedimentation Control (TESC) plan shall be provided. No ground disturbing activities shall commence until the TESC plan has been reviewed and approved by Whatcom County Planning and Development Services.
117. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
118. The project shall comply with all applicable federal, state and local laws and regulations. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
119. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and

the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

120. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
121. The location of the ordinary high water mark shall be shown on the construction plans submitted for the building permit.
122. A mono-pile design is required. Construction drawings submitted for the building permit shall demonstrate a mono-pile construction.
123. The distance from the landing to the first pile shall be the maximum feasible for a clear span of the supratidal zone and the distance between other piling shall clear span the rocky habitat, if feasible.
124. Pier decking and stair surfaces shall be entirely grated with functional grating.
125. The community pier shall not exceed six feet in width and 90 feet in length. The community float shall not exceed eight feet in width and 50 feet in length.
126. Functional grating shall be installed on 50% of the float. Grating shall not be located over flotation.
127. The float shall be anchored to the substrate using the minimum piles necessary, not to exceed (3) piles.

128. Flotation shall be fully encapsulated in a shell. Shell must be designed to prevent break up or loss of flotation material.
129. A small access float supporting the gangway to accommodate tidal fluctuation may be installed. The access float shall be no greater than 4 feet wide and 6 feet in length.
130. Float stops shall be installed, if the potential exists for grounding of the float.
131. Install ridge caps with bird spikes on top of the piles to minimize predation of prey species.
132. The width of gangway shall not exceed 4 feet. The gangway shall be entirely grated with functional grating.
133. To avoid impact to juvenile rockfish construction shall occur September 30 through March 15.
134. To avoid impacts to juvenile salmonids construction shall occur August 1 through February 15.
135. Conditions of the WDFW Hydraulic Project Approval including mitigation shall be a considered a conditions of this permit.
136. If vibratory pile driving will be used than a narrative of standard operating procedures compliant with Army Corps of Engineers Regional General Permit 6 for construction in inland marine waters shall be provided at the time building permit submittal. The narrative must address marine mammals including pinnipeds and cetaceans for noise attenuation and in water affects.
137. A final mitigation plan shall be submitted at the time of building permit application addressing the recommended habitat management measures in addition to the required mitigation for the upland community dock landing and trial construction. The final mitigation plan shall include mitigation equivalent to the Army Corps of Engineers Regional General Permit Appendix B: Compensatory Mitigation Calculator.
138. For trail construction and community dock landing new impacts to the marine shoreline buffer shall be mitigated at a ratio of 1.25 to 1, unless specifically address in the approved habitat management plan.
139. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the

proposed extension is given to parties of record and the Department of Ecology.

### **Health Department**

140. The applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated September 9, 2020, unless modified by that Department or appealed to the appropriate agency.
141. OSS components and transport lines maintain required setbacks as stated in Whatcom County Code 24.05.100 including but not limited to roads, proposed stormwater facilities and drinking water lines.
142. If OSS easements are located under the road, OSS transport lines will need to be installed prior to road construction.
143. For those OSS located on different parcel than they serve (Tract A), individual OSS permit applications will be required and transport lines will need to be installed prior to final approval. For OSS located on Tract A, a natural resource assessment may be required prior to OSS permitting and installation.
144. Prior to final approval, the applicant will be required to provide water system design approval from the Washington State Department of Health and all water system infrastructure must be installed.
145. The applicant states in the SEPA checklist that there will be no groundwater withdrawal. The applicant must provide evidence of well decommissioning to WCHD prior to final plat approval.

### **Critical Areas – Additional Conditions**

146. Future development shall preserve 95% of the coniferous trees and 95% of the madrone trees with a DBH greater than 24 inches, or are older than 80 years of age.
147. A Class IV General Forest Practice Application for land Conversion is required prior to issuance of civil drawings for areas converted during construction activities authorized by the preliminary plat approval.
148. Future development will be required to obtain a land conversion permit at the time of development.
149. Trails are prohibited to traverse through herbaceous balds. This condition shall be a required plat note.
150. Prior to construction on any lots with an herbaceous bald habitat, a site inspection to ensure the construction setback is clearly established or

demarcated is required.

Report prepared for the Technical Review Committee by:

Amy Keenan, AICP  
Senior Planner

Attachment A: Draft Development Agreement, October 16, 2020  
Attachment B: Shoreline Staff Report, November 5, 2020  
Attachment C: Exhibit List